DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

9 May 2000

Tuesday, 9 May 2000

Justice and Community Safety—standing committee 1231
Occupational Health and Safety Amendment Bill 2000 (No 2) 1236
Personal explanation 1238
Occupational health and safety legislation 1239
Justice and Community Safety Legislation Amendment Bill (No 3)1999 1240
Periodic Detention Amendment Bill 1999 1263
Interpretation Amendment Bill 2000 1267
First Home Owner Grant Bill 2000 1268
Planning and Urban Services—standing committee 1268
Questions without notice:
Goods and services tax—small business 1274
Members staff—travel 1277
Drug use study 1277
Housing—newsletter 1279
Housing—Tuggeranong office 1280
Housing—maintenance 1281
Internet gambling 1282
Gungahlin Drive extension 1284
Diesel fuel rebate 1287
Fringe benefits tax—nurses 1289
Junction Youth Health Centre 1290
Personal explanations 1291
Questions without notice:
Alcohol and drug program client records 1294
Answers to questions on notice:
Closed-circuit television cameras—public places 1294
Justice and Community Safety—standing committee 1294
Presentation of papers 1297
Public Sector Management Act—Management Standard No 6 of 2000 (Ministerial statement) 1298
Presentation of papers 1299
Justice and Community Safety—standing committee 1300
Independent Competition and Regulatory Commission report—ACTION's bus fares for 2000-2001 1302
Commissioner for the Environment—towards no waste by 2010 1303
Land (Planning and Environment) Act—variation (No 113) to the Territory Plan—Kingston foreshore (Ministerial statement) 1308
Presentation of papers 1311
Suspension of standing and temporary orders 1311
Justice and Community Safety Legislation Amendment Bill (No 3)1999 1311
Planning and Urban Services—standing committee 1313
Planning and Urban Services—standing committee 1314
Planning and Urban Services—standing committee 1314
Land (Planning and Environment) (Amendment) Bill 1999 1315
Adjournment:
Impulse Airlines—personal explanation 1329
Death of Mr Peter Mazengarb 1330
Death of Mr Peter Mazengarb 1330
Death of Mr Peter Mazengarb 1330
Housing—newsletter 1333

Tuesday, 9 May 2000

MR SPEAKER (Mr Cornwell) took the chair at 10.30 am and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE
Scrutiny Report No 6 of 2000 and Statement

MR OSBORNE (10.34): I present *Scrutiny Report No 6 of 2000* of the Standing Committee on Justice and Community Safety performing the duties of a scrutiny of bills and subordinate legislation committee. This report was provided to the Speaker for circulation on Wednesday, 3 May 2000, pursuant to the resolution of an appointment. I move:

> That the report be noted.

MR OSBORNE: Mr Speaker, the scrutiny of bills committee has discussed one particular aspect of this report in session twice, and I have had subsequent correspondence and discussions with the Clerk of the Assembly to understand the full implications of the potential impact of the passage of the legislation.

The scrutiny of bills legal adviser, Peter Bayne, has commented at length on allowing a body or person other than a parliament to raise a tax. His initial comments were challenged by the Treasurer, and members would have noted Mr Bayne's response when this report was distributed late last week.

Mr Speaker, I would like to read an email from the Clerk in relation to this issue. I have discussed it with Mr McRae, and he has no problems with me doing that. It says:

> Having reviewed the committee's initial comments, the Minister's response, and the committee's comments in its report No.6 of 2000 I have the following comments to add.
>
> The genesis of the Bill is
>
> (a) to remove the possibility (referred to as "theoretical possibility" in the em) of a determined fee being challenged and found invalid if it were found that it imposed a tax (the em considered this possibility more theoretical than real); and
>
> (b) according to the em, where determined fees are increased to meet GST payments it will be difficult for the Territory to argue that its fee represents an amount that is a fair recompense for the service that is provided and this will leave the fee open to challenge.

These matters were addressed by the Scrutiny Committee in its original comments on the Interpretation Amendment Bill 2000. The report summarised the highly significant constitutional background of the matter and challenged the contention that there was a "gap" in the Territory law that needed to be filled by the new provision. (No doubt you have read and re read this). The report also offered an "out"—to the extent that there may be a problem with the GST (the committee was guarded on this—it did not appear convinced there was a problem [though there may well be one - see the Minister's letter of 14 April)] it could be dealt with by a much more limited provision, ie by providing that if an Act authorised or required the determination of a fee, charge or other amount, the power included the power to make such determination as takes into account the GST.

The Minister's response on 14 April reiterated and expanded the Government's position and called for clarification on one aspect of the committee's report. The committee made further comment in its Scrutiny Report No.6. These comments addressed the issues raised by the Minister ((a) vesting powers to determine fees in persons other than Ministers (b) removal of the possibility of judicial challenge to the determination of fees on the grounds that they could be taxes [the committee's view on the latter was that this would not necessarily be seen as a virtue]).

I can only reiterate the general views made by the committee. Clearly, the onflow of the GST in determination of fees and charges has to be addressed and the committee's proposal to restrict the proposal to legally include the GST in price determinations appears to be a very acceptable way to address this problem.

To proceed down the path as proposed in the legislation is of major significance in the Assembly and could have major implications in the future. To authorise the raising of taxes by subordinate legislation is a critical step and a fundamental principle is at stake. Clearly, subordinate legislation does not have the same level of scrutiny as primary legislation—parliamentary review only occurs after the fact (this is critical in this case) and to seek to disallow then would probably raise a raft of administrative issues as indicated in the committee's last report on the matter. It would also be likely to raise a raft of political issues as well. Once a tax is imposed it can prove very difficult to undo—there are significant precedents of temporary taxes becoming permanent taxes.

It is not suggested that this Government would misuse or abuse the power. The power, however, will be available in the future in possibly very different circumstances than exist now—it could be argued that there is clearly a duty of care for the future here.

I did consider another possibility, however, on reflection, I have concluded that this is not nearly as acceptable as the initial proposal made by the committee to address the issue of addressing GST costs when fees are determined and is nowhere as good as the established procedures.

By way of summary:

The proposal is clearly of major significance and challenges a fundamental principle of representative democracy;

> The GST issue could be addressed in a more focussed way as suggested by the committee;
>
> To authorise the levying of a tax by way of a subordinate law will be a significant diminution in the role of the Assembly in that—
>
> the initiation of the tax will not be by way of primary law and will not need Assembly (therefore community) approval and will not receive Assembly (that is community) scrutiny (although the Assembly will have veto rights after initiation); and
>
> this could be utilised in the future in ways that have not yet been contemplated; and
>
> To remove the possibility of judicial challenge to fees on the grounds that they are, in substance, taxes is not necessarily to be seen as a virtue (as pointed out by the committee).
>
> The key issue is the Assembly's responsibilities to the citizens of the Territory—Taxes would be initiated without the authority of the people's representatives.

Mr Speaker, I would also like to read a brief extract from a book loaned to my office by the Clerk, entitled *An Encyclopaedia of Parliament.* Most members will be familiar with the big green book that Mr McRae often delves into. This one sits beside it on his bookshelf. It states:

> Of supreme importance in parliamentary history was the reign of Edward I, the great legislator. Under him the institutions of our government advanced with a rapidity hitherto unmatched. Edward's first Parliament … met in 1275 and enacted the first Statute of Westminster, a just and enlightened measure safeguarding the rights and liberties of each subject ... the climax in the constitutional history of the reign was reached in 1295 with the summoning of the celebrated Model Parliament. It met on 13 November and was called because the King stood in urgent need of money. This Parliament became the model for all future Parliaments … The King surrendered to the Model Parliament his power of arbitrary taxation and, although subsequently infringed, the parliamentary control of taxation became an accepted constitutional principle from that date.

Mr Speaker, Edward I is none other than the King nicknamed "Longshanks" in the film *Braveheart*, featuring Mel Gibson, which I am sure most, if not all, of us have seen. Leaving aside Edward's altercations with the Scots, he nonetheless did a lot of good things during his reign that still affect us in Canberra today. He inherited a primitive form of parliament known as the King's Great Council, and transformed it into a legislative body that represented all areas of society: the land-owning barons, the common people and the church.

Apparently, he began to finance his wars in France and Scotland by instituting both income and personal property taxes. Not surprisingly, this so strained his relationship with the English nobility that the parliament set about curtailing the royal authority. It concluded and set in stone the principle that no tax should be levied without consent of the realm as a whole as represented by the parliament.

Mr Speaker, this government bill does not contain an intentional evil that the Liberal Party wishes to impose on our community but, more importantly, it opens the door just a tiny crack for such a thing to take place in the future. If it has been good enough for the last 703 years for Westminster parliaments around the world to live with the principle that only parliament can raise a tax, then perhaps we can all put up with it for a little while longer.

I appreciate Mr Humphries' denials that he would never consider allowing this door to be opened any wider, but we need to remember that one day there will be other people sitting in those seats opposite making decisions for the territory. Good intentions now can easily become lost in a few short years and misinterpreted by some future cash-strapped government.

Thin-end-of-the-wedge solutions such as this, Mr Speaker, can easily take on a life of their own and become such a part of us that we can never get rid of them. Members might wish to consider the history of pay-as-you-earn income tax as a lesson—an idea introduced by Pitt the Younger in 1799 as a temporary measure to raise funds for the Napoleonic wars.

As I have said, Mr Speaker, rather than rejecting this bill outright, I suggest that the government have a look at the report and what I have had to say. I am quite happy to have discussions with them before the legislation comes on, to see whether I personally would support it. But it is very clear that there is a fundamental principle here. Given what this government has been through in the last couple of years, I would have thought that they would have given more thought to trying to overturn it.

I commend the report to the Assembly.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.44): Mr Speaker, I hear what Mr Osborne had to say about this legislation. I have also put on the record previously the government's views about this, and I want to do so again very clearly. The principle that Mr Osborne has stated, that parliaments should either enact taxation laws or authorise taxation laws, is a principle to which this government adheres absolutely. I can say with some confidence that in my time in this place I have stood very firmly behind that principle. There have been debates of this kind in the past, and my view has never wavered from the view that parliament must impose or authorise the imposition of such taxes. It should not and cannot be done by the executive.

There are examples, however, of where parliament has authorised the levying of taxes by the executive where the detail or the form of the tax has not been finally determined by parliament but rather has been determined by the executive with the authority of parliament. A good example of that, I think we will find, was only a few months ago in this place, with the passage of the Road Transport (General) Bill 1999. It was part of

a national legislative package which authorised and required certain new taxation provisions to be put in place with respect to the new road transport system. The result of that was that there was not an authority conferred on the executive to put in place, without further reference to parliament, certain fees which could be characterised as taxes on some construction, although of course such charges would be subject to disallowance on the floor of the Assembly.

Mr Speaker, I want to explain the reason for the government's Interpretation Amendment Bill. It arises out of a concern that has been expressed, perhaps not a concern about a very likely event but a concern about an event nonetheless which has been flagged very clearly for the government's attention: the collection of government fees and charges which may contain an element of taxation without proper authority. The present legislation authorising the collection of those particular fees and charges does not extend to the collection of the taxes associated with them. It is clearly, unequivocally and unambiguously not the government's intention to allow the executive to collect taxes per se, to create or designate taxes which we should be able to collect by virtue of this amendment to the Interpretation Act. I can absolutely confirm that that is not the government's intention.

Mr Osborne's committee has raised the possibility that even unintentionally this may be the effect of the legislation. My advice is that it is not the effect of the legislation, but I am prepared to look in more detail at the issues Mr Osborne's committee has raised, to see whether we can clarify further the effect of the words that have been used in the government's bill.

With respect to the main issue which this bill is meant to address—that is, the collection of goods and services tax on ACT government fees and charges—the position is slightly different to the one that has been put by the committee. There are a whole swag of government taxes, charges, fees and so on which, under a division 81 instrument executed by the federal Treasurer, have been exempted from goods and services tax.

There are, however, a number of other government fees and charges for what amount to services a person purchases which are subject to GST. For example, when you use the merry-go-round in Garema Place, you are not paying a tax; you are using a government service. You are paying a fee to use the merry-go-round and, quite rightly, the federal government has said that it is a service which should be subject to GST.

At the present time there is a doubt about whether a determination made by me as Treasurer, or perhaps by the Minister for Urban Services—I am not sure who—to impose a fee to ride on the merry-go-round also includes the 10 per cent GST, which must be collected at the same time. That is what this Interpretation Amendment Bill is meant to address: collecting the 10 per cent GST at the same time as we collect the $2.50 to ride on the merry-go-round.

Mr Speaker, on the question of the GST being a tax which must come before parliament, of course the GST has come before parliament. The GST has been authorised by parliament—not this parliament but the federal parliament. The federal parliament has decided that from 1 July, with some exemptions, a 10 per cent tax should be imposed on goods and services which are provided within Australia. Therefore, the parliamentary authority which Mr Osborne quoted a number of precedents for, has already been

provided for that GST component of fees and charges which governments otherwise collect. To make it absolutely clear, it is not the government's intention to do any more with this legislation than to collect a tax in respect of a fee or charge.

Mr Berry: You have breached the principle.

MR HUMPHRIES: No, we have not breached the principle, Mr Berry. You do not understand. The principle is that we are obliged, as every other Australian government is obliged, to collect goods and services tax at the same time as we impose certain ACT government fees and charges. It is our obligation under the law of the Commonwealth of Australia to do that, but there is some doubt under the matching ACT law as to whether, at the same time as we collect the fee or charge, we can also collect the 10 per cent GST that goes with it. That is the intention of the government's bill. It is my advice from the Office of Parliamentary Counsel that our bill does no more than that.

However, I am aware of the fact that concerns have been raised by the scrutiny of bills committee. I think this is a matter we should take up with, and obtain proper advice about from, the Government Solicitor or Office of Parliamentary Counsel. We already have advice from parliamentary counsel but, if we need to, we can get advice from other sources as well, such as the Government Solicitor, and see whether the bill does in fact do the things that it has been suggested it does. I clearly state to the Assembly that is not the government's intention to do any more than I have said, and it is not the effect of our legislation, according to the Office of Parliamentary Counsel. However, there are doubts about that, and therefore I think it would be appropriate to defer debate on this bill until we have a chance to get further advice on the matter.

Question resolved in the affirmative.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2000 (NO 2)

MR SMYTH (Minister for Urban Services) (10.52): Mr Speaker, I ask for leave to present the Occupational Health and Safety Amendment Bill 2000 (No 2).

Leave granted.

MR SMYTH: Mr Speaker, I present the Occupational Health and Safety Amendment Bill 2000 (No 2), together with its explanatory memorandum.

Title read by Clerk.

MR SMYTH: I move:

> That this bill be agreed to in principle.

Mr Speaker, members will recall that the coroner's report of the inquest into the death of Katie Bender recommended, amongst other things, that ACT WorkCover should be a statutory authority independent of any departmental control. The government brought to the Assembly late in 1999 a bill that would give effect to this recommendation.

In debate, the Assembly preferred a model submitted by Mr Berry to amend the Occupational Health and Safety Act to create the statutory position of Commissioner for Occupational Health and Safety.

My department has been working since then to implement the decision of the Assembly. I can report that good progress has been made. The recruitment process for the commissioner's position is advancing, and structural changes within the department in anticipation of the commencement of the commissioner are largely completed. The new arrangements will come into effect on 23 June this year.

However, Mr Speaker, some difficulties have been encountered in implementing the decision of the Assembly, and these go to the heart of the coroner's concerns about, and the Assembly's desire for, the independence of this very important regulatory function. It has become apparent that the commissioner's position does not have the power to engage and manage staff, nor does it have financial management powers. Instead, the commissioner is reliant on a chief executive of a department or agency to provide and manage the resources for the conduct of the commissioner's functions. I am sure that members will agree that this is not desirable and that it potentially compromises the independence of the position. I have received advice from my department that the bill I am presenting is the only practical approach available to redress this undesirable situation and to give full effect to the Assembly's objective to provide proper independence of the commissioner.

Mr Berry is also aware of the problems. He has tabled for Assembly consideration a bill which he claims will overcome these problems. At the appropriate time I will explain to members why Mr Berry's approach is insufficient and why the bill I am tabling today is the only practical way in which the Assembly's original decision can be achieved.

This bill involves a minimal change to the original scheme the Assembly approved. It keeps all the features of the commissioner—the powers, functions, roles and references to other relevant laws. The effect of all of these is unchanged. However, the bill creates the commissioner as a corporation sole. This is a simple arrangement that enables the commissioner to properly administer the organisation. It provides all the necessary financial and human resource powers but without any involvement of a department. It ensures that the commissioner is responsible and accountable for resource management decisions.

Mr Speaker, this has been lacking in the legislation to date, and Mr Berry's bill will not deliver this level of independence. The government's approach is efficient. No boards of management are involved. No blurring of accountabilities and relationships occurs. In fact, this bill will ensure that the Assembly's original decision to create a properly independent office can be delivered.

Mr Speaker, normally we would give more notice of legislation, but unfortunately this legislation went through cabinet only yesterday. I have had my staff distributing to each of the offices this morning all the relevant information and have offered to all members immediate briefings from officials of the department.

I believe that this bill should be debated cognately with Mr Berry's. If the Assembly is ready, we may even do both on Thursday. We would do Mr Berry's in government time as well. I thank members for their leave to present this bill this morning.

Debate (on motion by Mr Berry) adjourned.

PERSONAL EXPLANATION

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

MR SPEAKER: Very well. Leave is granted.

MR BERRY: It is in response to some of the things that have been said by Mr Smyth. Mr Smyth seemed to intimate that there was an inadequacy in the bill put forward by me. I know that the government is trying to play some catch-up politics.

Mr Smyth: Mr Speaker, this is hardly a personal explanation. It is a matter of debate.

MR SPEAKER: Just a moment. I will hear him out. Go on, Mr Berry.

MR BERRY: I know that the government is trying to play catch-up politics because it was a matter of severe embarrassment for the government—

MR SPEAKER: We are getting away from a personal explanation, aren't we?

MR BERRY: Mr Speaker, I would just like you to extend to me the same generosity that you extended to Mr Humphries in making a personal explanation following the introduction of Mr Stanhope's bill in private members business when we last sat. Mr Humphries made a quite extended statement in relation to his position on that bill. I hope that you would extend the same generosity to me in relation to this matter.

MR SPEAKER: As long as you stay on the topic, it will be all right.

MR BERRY: I will stay on the topic of the occupational health and safety matters and the government's performance in relation to this matter.

MR SPEAKER: No, that is not a personal explanation. Mr Berry, you understand the rules probably better than anybody else in this chamber, as you make many personal explanations.

MR BERRY: Mr Speaker, all I intend to do is adopt the same course as Mr Humphries. You can sit me down if you wish. Mr Speaker, the government's performance has been an embarrassment for them. It was drawn to their—

MR SPEAKER: Order! Mr Berry, this is not a personal explanation. I will sit you down if you persist.

MR BERRY: I intend to persist with that line, Mr Speaker, so you can sit me down if you wish. I just want consistency, that is all.

MR SPEAKER: Mr Berry, you have referred to a matter that took place in the last Assembly. I do not have the matter in front of me. Secondly, as the debate on this matter has been adjourned, you will have the opportunity to debate in great detail what you perceive as the failings of the government.

MR BERRY: No. I would like to have the same generosity extended to me as was extended to Mr Humphries.

OCCUPATIONAL HEALTH AND SAFETY LEGISLATION
Statement by Member

Mr Kaine: Mr Speaker, can I seek to resolve this issue by moving that Mr Berry be given leave to make a statement on this matter?

MR SPEAKER: That may clear the matter up very well, thank you. Is leave granted for Mr Berry to make a statement on the matter?

Leave granted.

MR BERRY: Mr Kaine, thank you. I would rather have tested the Speaker's generosity.

MR SPEAKER: Be careful, Mr Berry!

MR BERRY: Now that you have taken that opportunity away from me, the matter remains untested. Mr Speaker, I think this is merely a case of the government playing catch-up politics. It has been severely embarrassed about this matter from the beginning. It goes back to the days when a senior minister first interfered with occupational health and safety inspectors in the performance of their duties. The matter of the minister's interference did not come before the coroner, but the matter of a senior public servant's attempted interference in the performance of the duties of occupational health and safety officers did come to the notice of the coroner and the coroner quite appropriately raised the issue. Where those instructions came from or where the direction of the government came from before that reported attempt occurred remains something of a mystery.

I have not had much time to sit down and examine this bill, but if it does what it says it does then I am very happy that the government has decided at last to get on board a program to provide independence to the Occupational Health and Safety Commission in the model which was supported by this Assembly. I hope that, on close examination of this bill, we do not discover that this is just an attempt to build up the government's credibility in relation to this issue, which has been so poor up to this point.

Mr Speaker, I have not had a chance to talk to other members to determine whether they might wish to deal with this matter on Thursday or Wednesday or some time this week. As the process of recruiting a new Occupational Health and Safety Commissioner is well and truly under way, it would be better to deal with this earlier rather than later.

Another question arises in my mind. If the provisions which I introduced in private members business some time ago in relation to the employment powers of the Occupational Health and Safety Commissioner are inadequate, then the issue of their adequacy will also apply in relation to the Auditor-General, because they were lifted from the legislation that applies to the Auditor-General. The government has said that the model that was put forward is inadequate. Is this an admission that there is a problem with the Auditor-General's powers, his independence and so on?

I trust that if these provisions are a sign that there are problems with the Auditor-General's independence we will need to deal with them rather quickly. While the government has mentioned the claimed inadequacy of the provisions that were put forward by me, it would be interesting to see what their views are in relation to the Auditor-General's legislation, which contains exactly the same provisions as the employment powers proposed for the Occupational Health and Safety Commissioner.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL (NO 3) 1999

Detail Stage

Debate resumed from 7 March 2000.

Clauses 2 to 4, by leave, taken together and agreed to.

Schedule 1.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.03): Mr Speaker, I ask for leave to move amendments Nos 1 and 2 circulated in my name together.

Leave granted.

MR HUMPHRIES: I move:

> Page 3, line 2, before the proposed amendment of the *Consumer Credit Act 1995*, insert the following amendment:
>
> ***"Commercial Arbitration Act 1986***
>
> **Subsection 20A (1)—**
>
> Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".
>
> Page 6, line 25, before the proposed amendments of the *Credit Act 1985*, insert the following amendment:
>
> ***"Coroners Act 1997***
>
> **Subsection 42A (1)—**
>
> Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*.'.".

Mr Speaker, I might speak at this point generally on the government's amendments rather than speaking in detail on each amendment as it comes up. The amendments deal with a number of issues, in particular two technical issues raised with me very recently by the Director of Public Prosecutions concerning the administration of justice in the ACT. Those issues came to light in decisions last year by the ACT Supreme Court and the High Court of Australia. It is desirable that they be resolved as soon as possible to ensure that the legislation previously enacted by this Assembly can operate as it was always intended to do.

For that reason, the government has decided to address them by making amendments to the Justice and Community Safety Legislation Amendment Bill (No 3). They have been on the table now for some time, and I am sure members have had the chance to study them in some detail. The fact that the problems were identified only recently, combined with the need to move promptly to remedy those problems, requires the Assembly to deal with them by way of amendment to the present bill rather than as a separate bill.

The first problem directly involves ACT legislation, and the second has implications for the ACT which need to be addressed to prevent future difficulties. First of all, there are issues to do with the Evidence Act. The first issue concerns provisions currently contained in Part 12AA of the Evidence Act 1971, relating to the taking evidence by audio-visual link. These provisions will enable evidence to be taken more cost effectively and expeditiously from witnesses who are physically located interstate or in a location in the ACT other than the court—for example, the Remand Centre. They were inserted last year to enable the ACT to participate in a national scheme developed by the Standing Committee of Attorneys-General for taking evidence from interstate or outside the court using audio-visual links.

The Master of the Supreme Court recently found the provisions to be inoperative due to the effect of the Commonwealth Evidence Act 1995, which applies in the ACT. This is because section 8(4) of the Commonwealth act has the effect that only certain provisions of the ACT Evidence Act 1971 are to be operative. The operative provisions are those that are specified in regulations made by the Commonwealth. Those regulations were made before Part 12AA was added to the ACT Evidence Act 1971 and have not been amended to take account of Part 12AA and therefore that part is inoperative.

To give effect to provisions currently contained in part 12AA of the ACT Evidence Act, without being dependent on the Commonwealth's preparedness to act quickly to make necessary amendments to their regulations, the government amendments will ensure that these provisions can take effect in their own right. It is clearly a hangover from the days when the Commonwealth administered the ACT that they would have that power over the enactment of certain ACT laws. I would suggest that such powers no longer are appropriate, given the self-governing nature of the ACT.

To achieve patriation of that power, the government amendments repeal part 12AA in its entirety and insert identical provisions into a different act, the operation of which is not subject to regulations having been made under the Commonwealth act. The act into which the provisions will be transferred by this repeal and insertion process is the Evidence (Closed-Circuit Television) Act 1991. The act will then be renamed the Evidence (Miscellaneous Provisions) Act 1991. The transfer of part 12AA provisions

will necessitate a number of consequential amendments to other acts to amend references in those acts to the provisions that have been transferred. Consequential amendments form the major part of the government amendments to the schedule.

I note that, as a result of the government bringing forward the amendments to part 12AA which it took to the Assembly last year, Mr Stanhope is taking the opportunity to move again his amendments which sought to restrict the use of closed-circuit television. Members may or may not wish to have a fresh debate about those matters in the Assembly today.

In relation to the second matter, members may be aware that the High Court has considered an appeal by Alan Bond against his sentence for offences under the Corporations Law. That appeal has been upheld. The appeal was based on a decision of the High Court last year in relation to the interjurisdictional arrangements between states and the Commonwealth for prosecuting offences. The decision gave a very narrow interpretation to the concept of prosecution which resulted in a finding that the prosecutor in that case could not appeal against the sentence handed down in relation to the offences that had been prosecuted.

The decision the High Court has made clearly puts in serious doubt, if not totally invalidates, arrangements for interjurisdictional intervention in appeal processes. The ACT Director of Public Prosecutions has arrangements in place to conduct certain Commonwealth prosecutions on an agency basis. Those arrangements may be affected by the very limited definition of prosecution given by the High Court, and it is appropriate to ensure that there are sufficient powers in relation to Commonwealth offences so that the ACT Director of Public Prosecutions and his staff can prosecute appropriately and effectively in those circumstances. The government amendments to the schedule therefore include amendments to ensure that the DPP and his staff can deal with appeals against sentences and orders for review in relation to the Commonwealth offences which they can prosecute.

That is the effect of the government amendments. They are quite long amendments, but they cover just those two matters. I would commend them to the house on that basis.

Amendments agreed to.

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

> Page 7, line 4, before the proposed amendments of the *Fair Trading Act 1992*, insert the following amendments:
>
> ***"Director of Public Prosecutions Act 1990***
>
> **Paragraphs 6 (1) (fa) and (g)—**
>
> Omit the paragraphs, substitute the following paragraphs:
>
> '(fa) making applications for orders to review under section 219C of the *Magistrates Court Act 1930*, and conducting such proceedings;
>
> (fb) for prosecutions or other proceedings mentioned in paragraphs (a) to (fa)—causing the proceedings to be brought to an end;
>
> (g) for appeals in relation to matters mentioned in paragraphs (a) to (fb)—
>
> (i) instituting or responding to appeals (including appeals against sentence);

(ii) conducting appeals (including appeals against sentence) as appellant or respondent, whether instituted or responded to by the director or not;'.

Paragraphs 6 (1) (h)—

Omit the paragraph, substitute the following paragraph:

'(h) functions given to the director under another provision of this Act or any other Territory law;'.

Subsection 6 (3)—

Omit the subsection.

Subsection 10 (3) (definition of *right of appeal*, paragraph (b))—

Omit 'rehearing', substitute 'rehearing; and'.

Subsection 10 (3) (definition of *right of appeal*))—

After paragraph (b), add the following paragraph:

'(c) a right to appeal against sentence.'.

Section 16A—

Repeal the subsection, substitute the following section:

'16A Commonwealth prosecutions by director and staff of office

'(1) This section applies to the director, or a member of the staff of the office who is a legal practitioner, if the director or member is authorised to prosecute offences against Commonwealth laws under—

(a) a Commonwealth law; or

(b) an instrument issued by or on behalf of the Commonwealth under an agreement between the Territory and the Commonwealth; or

(c) an agreement with the Commonwealth director.

'(2) The director or member may institute or conduct prosecutions against Commonwealth laws in accordance with the Commonwealth law, instrument or agreement.

'(3) Without limiting subsection (2), the director or member may do any of the following in relation to offences against Commonwealth laws:

(a) make applications for orders to review under section 219C of the *Magistrates Court Act 1930*, and conduct such proceedings;

(b) cause prosecutions and other proceedings to be brought to an end;

(c) institute or respond to appeals (including appeals against sentence);

(d) conduct appeals (including appeals against sentence) as appellant or respondent, whether instituted or responded to by the director or member or not.

'(4) In this section—

prosecution includes a proceeding for the commitment of a person for trial for an indictable offence.'.

Discrimination Act 1991

Subsection 96A (1)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.

Evidence Act 1971

Part 12AA—

Repeal the Part.

Evidence (Closed-Circuit Television) Act 1991

Title—

Omit the title, substitute the following title:

'An Act about evidence'.

Section 1—

Repeal the section, substitute the following Part and Part heading:

'PART 1—PRELIMINARY

'1 Name of Act

This Act is the *Evidence (Miscellaneous Provisions) Act 1991*.

'PART 2—GIVING OF EVIDENCE ABOUT SEXUAL OFFENCES BY CHILDREN'.

Section 2, heading—

Omit the heading, substitute the following heading:

'2 Definitions for pt 2'.

Subsection 2 (1)—

Omit '(1) In this Act, unless the contrary intention appears—', substitute 'In this Part, the following definitions apply:'.

Subsection 2 (1) (definition of *child*)—

Omit the definition.

Subsection 2 (1)—

Insert the following definition:

Magistrates Court includes the Childrens Court.

Subsection 2 (2)—

Omit the subsection.

New Parts 3 and 4—

After section 11, add the following Parts:

'PART 3—USE OF AUDIOVISUAL LINKS AND AUDIO LINKS

'Division 3.1—Preliminary

'14 Definitions for pt 3

In this Part, the following definitions apply:

audio link means a system of 2-way communication linking different places so that a person speaking at any of them can be heard at the other places.

audiovisual link means a system of 2-way communication linking different places so that a person at any of them can be seen and heard at the other places.

participating State means another State where provisions of an Act in terms substantially corresponding to this Part are in force.

recognised court means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to this Part to direct that evidence be taken or a submission made by audiovisual link or audio link from the Territory.

State includes Territory.

Territory court means—

(a) a court constituted under a Territory law; or

(b) a royal commission under the *Royal Commissions Act 1994*; or

(c) a judicial commission under the *Judicial Commissions Act 1994*; or

(d) a tribunal of the Territory; or

(e) an arbitrator or umpire conducting proceedings under the *Commercial Arbitration Act 1986*.

tribunal, in relation to a State, means a person or body authorised under the law of the State to take evidence on oath or affirmation.

'15 Application of pt 3

This Part applies in relation to all proceedings, including—

(a) proceedings pending at the commencement of this Part; and

(b) proceedings begun after the commencement of this Part that arise from circumstances, matters or events that arose or happened before that commencement.

'16 Operation of other Acts

This Part is not intended to exclude or limit the operation of any Territory law that makes provision for the taking of evidence or making of a submission outside the Territory for a proceeding in the Territory.

'Division 3.2—Use of interstate audiovisual links or audio links in proceedings before Territory courts

'17 Application of div 3.2

This Division applies to any proceeding before a Territory court.

'18 Territory courts may take evidence and submissions from outside the Territory

'(1) A Territory court may, on the application of a party to a proceeding before the court or on its own initiative, direct that evidence be taken or a submission made by audiovisual link or audio link, from a participating State.

'(2) The court may make the direction only if satisfied that—

(a) the necessary facilities are available or can reasonably be made available; and

(b) the evidence or submission can more conveniently be given or made from the participating State; and

(c) the making of the direction is not unfair to a party opposing the making of the direction.

'(3) The court may exercise in the participating State, in relation to taking evidence or receiving a submission by audiovisual link or audio link, any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.

'(4) The court may at any time vary or revoke a direction under this Division, either on the application of a party to the proceeding or on its own initiative.

'19 Legal practitioners entitled to practise

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a legal practitioner—

(a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audiovisual link or audio link in a proceeding before a Territory court; and

(b) in relation to the making of a submission by audiovisual link or audio link from the participating State in a proceeding before a Territory court.

'Division 3.3—Use of interstate audiovisual links or audio links in proceedings in participating States

'20 Application of div 3.3

This Division applies to any proceeding before a recognised court.

'21 Recognised courts may take evidence or receive submissions from people in the Territory

A recognised court may, for a proceeding before it, take evidence or receive a submission by audiovisual link or audio link from a person in the Territory.

'22 Powers of recognised courts

'(1) The recognised court may, for the proceeding, exercise in the Territory, in relation to taking evidence or receiving a submission by audiovisual link or audio link, any of its powers except its powers—

(a) to punish for contempt; and

(b) to enforce or execute its judgments or process.

'(2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by operation of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving a submission by audiovisual link or audio link from a person in the Territory.

'(3) For the exercise by the recognised court of its powers, the place in the Territory where evidence is given or a submission is made is taken to be part of the court.

'23 Orders made by recognised court

Without limiting section 22, the recognised court may, by order—

(a) direct that the proceeding, or a part of the proceeding, be conducted in private; or

(b) require a person to leave a place in the Territory where the giving of evidence or the making of a submission is taking place or is going to take place; or

(c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

'24 Enforcement of order

'(1) Subject to rules of court, an order under section 23 may be enforced by the Supreme Court as if the order were an order of that court.

'(2) Without limiting subsection (1), a person who contravenes the order—

(a) is taken to be in contempt of the Supreme Court; and

(b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

'25 Privileges, protection and immunity of participants in proceedings in courts of participating States

'(1) A judge or other person presiding at or otherwise taking part in a proceeding before a recognised court has, in relation to evidence

being taken or a submission being received by audiovisual link or audio link from a person in the Territory, the same privileges, protection and immunity as a judge of the Supreme Court.

‘(2) A person appearing as a legal practitioner in a proceeding before a recognised court has, in relation to evidence being taken or a submission being received by audiovisual link or audio link from a person in the Territory, the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Supreme Court.

‘(3) A person appearing as a witness in a proceeding before a recognised court by audiovisual link or audio link from the Territory has the same protection as a witness in a proceeding before the Supreme Court.

‘26 Recognised court may administer oath in the Territory

‘(1) A recognised court may, for the purpose of obtaining in a proceeding, by audiovisual link or audio link, the testimony of a person in the Territory, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.

‘(2) Evidence given by a person on oath or affirmation so administered is, for the law of the Territory, testimony given in a judicial proceeding.

‘27 Assistance to recognised court

An officer of a Territory court may, at the request of a recognised court—

(a) attend at the place in the Territory where evidence is to be or is being taken, or a submission is to be or is being made, in the proceeding; and

(b) take such action as the recognised court directs to facilitate the proceeding; and

(c) assist with the administering by the recognised court of an oath or affirmation.

‘28 Contempt of recognised courts

A person must not, while evidence is being given, or a submission is being made, in the Territory by audiovisual link or audio link, in a proceeding in a recognised court—

(a) assault —

(i) a person appearing in the proceeding as a legal practitioner; or

(ii) a witness appearing in the proceeding; or

(iii) an officer of a Territory court giving assistance under section 27; or

(b) threaten, intimidate or wilfully insult —

(i) a judge or other person presiding at or otherwise taking part in the proceeding; or

(ii) a master, registrar, deputy registrar or other officer of the court who is taking part in or assisting in the proceeding; or

(iii) a person appearing in the proceeding as a legal practitioner; or

(iv) a witness in the proceeding; or

(v) a juror in the proceeding; or

(c) wilfully interrupt or obstruct the proceeding; or

(d) wilfully and without lawful excuse disobey an order or direction of the court.

Maximum penalty: Imprisonment for 3 months.

'Division 3.4—Use of audiovisual links or audio links between Territory courts and places in the Territory

'29 Application of div 3.4

This Division applies to any proceeding before a Territory court.

'30 Use of link in proceedings

'(1) Subject to any Act or rules of court, a Territory court may, on the application of a party to a proceeding before it or on its own initiative, direct that a person, whether or not a party to the proceeding, appear before, or give evidence or make a submission to, the court by audiovisual link or audio link from a place in the Territory that is outside the courtroom or other place where the court is sitting.

'(2) The court may make the direction only if satisfied that—

(a) the necessary facilities are available or can reasonably be made available; and

(b) the evidence or submission can more conveniently be given or made from the place that is outside the courtroom or other place where the court is sitting; and

(c) the making of the direction is not unfair to any party opposing the making of the direction.

'(3) The court may at any time vary or revoke a direction made under this Division, either on the application of a party to the proceeding or its own initiative.

'Division 3.5—Protection of certain communications and documents in criminal proceedings

'31 Application of div 3.5

This Division applies to a communication made, and a document transmitted, by audiovisual link or audio link between an accused person and his or her legal representative during the course of a proceeding in relation to which, or to a part of which, an audiovisual or audio link has been used under this Part or a provision of another Territory law.

'32 Protection of confidentiality

Without limiting any other protection that applies to it, a communication or document to which this Division applies is as confidential and inadmissible in any proceeding as it would be if it had been made or produced while the accused person and his or her legal representative were in each other's presence.

'33 Application of Listening Devices Act

The *Listening Devices Act 1992* applies to a communication or document to which this Division applies as if—

(a) for a communication—the communication were a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and

(b) for a document—

(i) any data, text or visual images in the transmitted document were words spoken to or by a person in a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and

(ii) a reference in that Act to the use of a listening device to overhear, record, monitor or listen to a private conversation included a reference to reading the document.

'Division 3.6—Costs and expenses

'34 Power to order payment of costs

A Territory court that directs evidence to be taken, or a submission to be made, by audiovisual link or audio link under section 18 or 30 may make such orders as it considers just for the payment of the costs and expenses incurred in relation to taking the evidence or making the submission, including any amounts prescribed under the regulations.

'PART 4—MISCELLANEOUS

'35 Regulation-making power

'(1) The Executive may make regulations for this Act.

'(2) The regulations may prescribe the amounts, or the way of calculating amounts, payable to a Territory court in relation to the cost of, or incidental to, the provision of an audiovisual link or audio link and ancillary equipment for Part 3.'.

Further amendments—

The following provisions are amended by omitting 'Act' and substituting 'Part':

Subsection 2 (1) (definition of ***proceedings***), sections 3, 3A and 4, subsections 8A (1) and (2), heading to section 10 and subsections 10 (1) and (2).

Renumbering—

In the next republication of the *Evidence (Miscellaneous Provisions) Act 1991*, the provisions of that Act must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.".

MR STANHOPE (Leader of the Opposition) (11.11): I move the following amendment to Mr Humphries' proposed amendment No 3:

Proposed new amendment of *Evidence (Closed-Circuit Television) Act 1991*, proposed section 14, definition of ***Territory court***, paragraph (d), omit the paragraph, substitute the following paragraph:

"(d) a tribunal of the Territory, other than the mental health tribunal; or".

I will take the same approach to the debate as the Attorney has. I will speak now to all my amendments to forestall the requirement to speak to each of them. The bill, as the Attorney has just explained, was introduced by him last year, and it proposed amendments to a range of legislation largely concerned with consumer affairs and fair trading. The Labor Party agreed to support the bill in its original format.

However, as the Attorney has just indicated, he proposes to amend the bill—and we have started that process—to correct the findings of the courts in relation to procedural matters affecting the DPP's powers and the power to take evidence by audiovisual links. As the Attorney explained, the proposal in relation to the DPP's powers flows from a recent case in the High Court which found that there were limitations on the power of the Commonwealth DPP to launch prosecutions and appeals on matters arising under state law. The amendments are designed to overcome those limitations and to ensure that the territory's DPP has the power to launch prosecutions and appeals under Commonwealth law. Mr Speaker, the Labor Party has no objection to those amendments.

In relation to the proposals concerning the giving of evidence by audiovisual link, members will recall that in 1999 the Assembly passed the Courts and Tribunals (Audio Visual and Audio Linking) Bill 1999, which gave courts and tribunals a discretion to take evidence by audio or audiovisual means.

In a recent case—once again I acknowledge that the Attorney has just explained this—the Master of the Supreme Court found those provisions to be inoperative due to the effect of the Commonwealth Evidence Act 1995. That act stipulates which parts of the territory's Evidence Act are operative. The provisions passed by the Assembly last year are not stipulated by the Commonwealth act to be operative. The Attorney proposes to cure this defect by re-enacting those provisions in another act that is not subject to the Commonwealth Evidence Act 1995. It appears unfortunate that the Attorney and his department made an error on introducing the amendments last year and as a consequence the amendments are not effective.

Members will also recall that the provisions as they related to persons making bail applications or persons detained under the mental health legislation were vigorously opposed by the ALP on the basis that they were a derogation of individuals' right to a fair and open hearing. It was and remains our contention that no reasonable person could say that it is fair for a person who has been involuntarily detained because of an alleged mental condition to give evidence on their own behalf in front of a TV camera. The allegedly disturbed person has done nothing wrong. They are entitled to face those who assert that they should be denied their liberty, as well as those who will judge them in an open hearing.

I am told by a number of sources that the magistrate sitting as the Mental Health Tribunal never required a person detained under the mental health legislation to give evidence by audiovisual link in any event. I am advised that the Chief Magistrate at least goes to wherever the detained person is for the purpose of taking evidence. If that is the case, Mr Speaker, then you have to ask the question: why does the court need a discretion at all? If the practice is that the court never imposes this obligation on a person detained under the mental health legislation, then why does the court need the discretion? Why not simply say that hearings shall take place in the presence of the detained person? It is my view and the view of the Labor Party that, out of fairness and justice and in order to maintain the fundamental principle of the right of all people to their liberty, otherwise than for lawful purposes, the right to appear in person in these circumstances must be retained and respected.

As for persons on remand without bail or waiting for a bail hearing, I remind members that various safeguards have been built into our criminal justice over the centuries since Magna Carta. I note what an historical morning it has been with Mr Osborne's speech in relation to the Attorney's proposal to impose taxation by regulation. Mr Osborne went back not quite as far as the Magna Carta but at least to Edward I.

We are talking here about important fundamental principles. A fundamental principle was espoused by Mr Osborne this morning on behalf of the scrutiny of bills committee, a fundamental principle about the right of parliament to scrutinise the imposition of taxation. Here we are talking again about a fundamental principle: the fundamental principle of the right of a detained person to face their accusers in an open court. That is a right that is being frittered away here. It is a fundamental right to appear in open court, to face one's accusers and to face those who will judge whether or not we are to be denied our liberty. I ask: how can any reasonable person say that a hearing conducted by audiovisual link, one end of which is in a police or prison cell, constitutes an open hearing?

The Chief Justice of the Supreme Court of New South Wales devoted his keynote address to the Australian Legal Convention that took place in Canberra in October last year to the issue of open justice. He described the principle that justice must be seen to be done—that is, the principle of open justice—as one of the most pervasive axioms of the administration of justice in our legal system. In the words of the Chief Justice:

> It informs and energises the most fundamental aspects of our procedure and is the origin, in whole or in part, of numerous substantive rules.

Debate often has a tendency to ignore such fundamental principles in the same way as we have failed to appreciate the way in which political change occurs in this country without the violence that often occurs in other nations. No-one thinks about it. We take it for granted. So we ask the question: to whom must justice appear to be done? The Chief Justice pointed out:

> The observer is not a party [to a case], not even the accused in a criminal trial. The relevant observer is always the "fair minded observer", acting "reasonably". Acceptance by such an observer, should also demand acceptance by a fair minded party.

We often refer in this place to the rights and obligations that we have accepted under international conventions. We debate the relevance of those, as it suits or does not suit our argument. But these are fundamental principles that we signed up to as a nation. I refer members to article 14 of the International Covenant of Civil and Political Rights, which was ratified by Australia, as everybody knows, and which provides:

> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law.

The covenant goes on to explain the reasons that perhaps one might be denied an open hearing in a court of law. Of course they go to issues of public morals, public order or national security, private lives, and the protection of juveniles or young people. There is no exception for convenience or cost, for the fact that it is cheaper to conduct your criminal trials by video camera than it is to conduct them in person.

What the Attorney seeks to do with these provisions about audiovisual bail hearings and mental health inquiries is to set up a system of closed hearings affecting persons who, in one case, are presumed innocent and, in the other case, simply ill. Arguing that an accused person or a mentally ill person should be detained without the right to face their accusers and judges in an open hearing is another chip taken out of the foundation of our liberties.

There is an axiom that should, in my view, always be borne in mind by legislators debating legislation which affects the rights and liberties of individuals. It is to the effect that we can only ever ensure that the rights of the best of us are protected and maintained if we are prepared to guarantee the rights and the liberties of the worst of us.

At the appropriate time during this debate—I am now talking generally about all my amendments—I will move that the Attorney's amendments relating to the removal of the discretion from persons who are mentally ill or who are bailed on remand should not be supported; that the discretion must be with a mentally person or detained person; that the discretion should not be located in the court. My amendments simply go to that fundamental principle.

Let us have audiovisual evidence for remandees, but let the remandee decide whether it is appropriate in his circumstances. Let us have an audiovisual link for people compulsorily detained in the psychiatric unit of the Canberra Hospital if such a person is competent to say, "I am happy to proceed in my hearing before the Mental Health Tribunal by audiovisual link but I will make the decision. I will not derogate to the court the right to decide for myself whether or not I can attend in person to put my case or to defend myself when it is a matter so fundamental as an individual's right to their liberty."

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.21): Mr Speaker, I reiterate that these issues were canvassed in last year's debate on the closed-circuit television provisions that went into the legislation which is now being amended. I would respectfully suggest to the Assembly that it should not change its view from the debate we had last year.

I will briefly outline why I believe that is the case. The argument is about the capacity of the court to adequately protect the operations of the court as well as the rights of people who come before it. In most circumstances—in fact, in almost every circumstance—where a person appearing before a court, either as an accused person or as a person who is the subject of some order such as a mental health order, seeks personal appearance they would be granted personal appearance. It would be extremely rare for such a person not to obtain personal appearance if they requested it when appearing before the court.

The matters Mr Stanhope raises are matters of extremely great exception, very rare exception indeed, when such leave or such permission would be refused. The question is: when would such permission be refused? It could be refused if, in the view of the court, it was appropriate to protect the functions of the court. Those things can and do happen in our courts, and appropriately they happen in our courts.

Mr Stanhope states, on what evidence I do not know, that people have a fundamental right to make a personal appearance in matters in which they are involved in our courts. Sorry, Mr Stanhope, that is simply wrong. It is not the case. Already, at the present time, the court has a general discretion to exclude people from the court for a variety of reasons and in a variety of settings, and that right of the court has been exercised on a number of occasions in recent years.

For example, during the trial of Mr Eastman, on a number of occasions Mr Eastman's disruptive behaviour resulted in the court ordering that he be removed from the court and follow proceedings remotely, if not by audiovisual means then by audio means from outside the court. Where was Mr Eastman's fundamental right to be present in the court on that occasion?

Mr Stanhope: That is a spurious example.

MR HUMPHRIES: It is not spurious, Mr Stanhope. You have just told this Assembly that every person in this country has an absolute right to appear in a court. Mr Eastman was charged with a serious criminal offence.

Mr Stanhope: I also acknowledged that there were a number of exceptions to that.

MR HUMPHRIES: Mr Stanhope, these are the exceptions we are building into this legislation—the exceptions which give the court the power to say, "No, it is not appropriate in these circumstances to give this person the personal right of appearance." It happens. That is exactly what the government's amendments are all about and exactly why the Assembly supported the amendments last year. There does need to be a power of the court to exclude people in certain circumstances.

Mr Stanhope's assertions are wrong. There are no general rights of appearance in Australian courts. My understanding, for example, is that if you make an application for leave to appeal to the High Court of Australia and you are a person in custody, you are not entitled to personal appearance, except in the exceptional circumstance where you are unrepresented in that appeal. In the highest court in the land, you have no right of personal appearance.

Mr Stanhope: They take appeals from the psychiatric—

MR SPEAKER: Order! Mr Stanhope, excuse me. Perhaps I can help.

MR HUMPHRIES: Sometimes they do.

MR SPEAKER: Excuse me, Mr Minister. Mr Stanhope, you have another 10 minutes on this matter. You can respond to Mr Humphries. It will save interjecting. That is what I am saying. Please continue, minister.

MR HUMPHRIES: If Mr Stanhope wants to go away and check the facts, he can do so. The courts have made it quite clear to me as Attorney-General that they believe that they need that discretion—in very rare cases, we have to concede—to be able to exclude people from that right of personal appearance. The fundamental principle Mr Stanhope states, that people have a general entitlement to come before the courts and appear personally before the courts, is quite true. There is a general acceptance of a person's right to be able to do that. But it is not unqualified. The qualification is contained in my amendments. Mr Stanhope now seeks to exclude it altogether and to remove from the court that discretion to protect its own operations, the conduct of its own proceedings, through mechanisms such as this which give it that right to be able to exclude people in certain circumstances.

I note that Mr Stanhope's amendments are slightly different to the ones he moved last year. I understand that the amendments with respect to Mental Health Tribunal operations provide for a total prohibition on using audiovisual links for mental health proceedings. In the previous amendments Mr Stanhope moved, he proposed to do with respect to the Mental Health Tribunal what he was going to do with respect to all the other tribunals and courts, which was to give the person concerned a discretion to consent to the use of an audiovisual link. Under the amendments he is moving, a person appearing before that tribunal cannot even consent to appearance by audiovisual link. He is taking away the right of a person to use a audiovisual link. I would like him to explain to this place why he proposes to do that. The Mental Health Tribunal rarely, if ever, takes evidence otherwise than in person. It is extremely rare for it not to do so.

Mr Stanhope: I wonder why.

MR HUMPHRIES: Because it is a question of derogation of people's rights.

Mr Stanhope: No, it is not, Attorney. It is because you have not bothered to put an audiovisual link in, you goose.

MR SPEAKER: Order, please! Mr Stanhope, would you stop interjecting. You will have the chance to speak later.

MR HUMPHRIES: Mr Speaker, I would ask Mr Stanhope to withdraw that reference to—

MR SPEAKER: Would you mind?

Mr Stanhope: What, "goose"?

MR SPEAKER: If the minister is offended, withdraw it.

Mr Stanhope: I am happy to withdraw "goose".

MR SPEAKER: Thank you.

Mr Stanhope: You silly person.

MR HUMPHRIES: I do not know why Mr Stanhope is getting personal about this, Mr Speaker. I am simply putting to the Assembly what has already been considered and agreed to by the Assembly with respect to protection of the operation of the courts of the ACT. If Mr Stanhope had bothered to consult with the courts about these matters, he would no doubt have had a very clear indication that they consider that the provisions we have put forward in the government's amendments are appropriate and should be retained.

If Mr Stanhope thinks that the learned judges and magistrates who populate our court benches have so little regard for the rights of individuals that they would be likely to trammel on those rights of individuals by use of this discretion, I think he has a lower opinion of them than I do. Mr Speaker, I think you can say lots of things about judges and magistrates, but their sensitivity to the needs of individuals and their circumstances is pretty clear. I have not been aware of any case where a person has been unfairly excluded from a right of appearance in a court in this territory—not one case.

We so often see this opposition put forward amendments in theoretical situations when, unfortunately, there is no practical or concrete example of why a particular right or a particular issue needs to be protected or a particular practice needs to be guarded against by having it dealt with in the legislation of the territory.

I consider that the case for a discretion is very clear. It is very obvious. It exists in ACT legislation and, as far as I am aware, it exists in legislation in all other jurisdictions as well. Mr Stanhope needs to make a compelling case for why we should depart from our existing law and the law of other jurisdictions in these matters and remove from the court a discretion to protect its proceedings in a way which is appropriate, given the challenges courts sometimes face from individuals who are intent on disrupting the work of the courts.

I note on a slightly analogous matter that members in this place, to which they are elected by force of the vote of the electorate of the ACT, have no unqualified right to appear in this place. Members can be and, as Mr Berry knows, are from time to time excluded from this place. Their right of appearance in the democratic chamber is qualified. If it is qualified here, why should it not be qualified in a court of law? Mr Speaker, I would suggest to members that the amendments that Mr Stanhope is putting forward should be rejected.

MR STANHOPE (Leader of the Opposition) (11.32): I think the arguments advanced by the Attorney are so shallow and so spurious as almost not to deserve response. I clearly indicated that there was a range of exceptions to a general and fundamental principle to appear in person in open court. It is a fundamental principle. I read into *Hansard* from my notes article 14 of the International Covenant on Civil and Political Rights, which sets out the range of exceptions that are acceptable under that convention. I did not go the extra step of giving some detail of the circumstances in which a court could refuse to allow a person to sit in person in that court.

The Attorney brought up the Eastman case. If there is a person who is being generally disruptive, threatening violence and doing all sorts of other things, then of course it is reasonable that he not be allowed to sit in the body of the court. We all know there are cases where courts will exercise that discretion. These amendments provide a blanket

discretion to a court and to the Mental Health Tribunal in every instance of a bail application by a remandee. We are talking here about bail applications by remandees. We are talking about people who have not yet got to the point of trial, people who are simply seeking an order in relation to their remand on bail as they await trial. We are talking about people perhaps involuntarily detained in the psychiatric unit of the Canberra Hospital. That is who we are talking about. We are not talking about the conduct of major criminal trials. We are not talking about the conduct of trials. We are talking about applications by people on remand, people who are still presumed innocent before the law, and we are talking about people who are being detained because they are ill.

Mr Humphries: Why can they not appear by audiovisual link?

MR STANHOPE: The Attorney, I think to his embarrassment, makes very much of the position that the Mental Health Tribunal has never not allowed a person involuntarily detained in a psychiatric unit to appear in person; that they have never utilised the opportunity provided to them to take evidence by audiovisual link. Guess why not, Attorney. Because there is no audiovisual link. The hospital psychiatric unit decided that they would not put an audiovisual link in—unless of course they can communicate through airwaves. Perhaps they do have some special capacity!

The reason the Mental Health Tribunal do not use audiovisual links to take evidence is that there is no audiovisual link. I understand from evidence before the Estimates Committee that the professor of psychiatry at the unit is totally opposed to the prospect of evidence ever being given in this way. The minister for health is here. He will perhaps remember the professor of psychiatry giving that evidence. She cannot imagine a circumstance in which it would be appropriate for a person involuntarily detained to be required to give evidence by audiovisual link. It would not be acceptable to her for people who have been involuntarily detained because of their mental state to be required to give evidence to the tribunal by audiovisual link.

The Attorney is not up with the debate. He has not done his homework. One of the great worries in this debate is that the government never went to the minister for health's department when they conjured up this scheme. They said, "Let's apply this audiovisual link to the Belconnen Remand Centre" and some bright spark said, "Let's apply it to the Mental Health Tribunal."

At estimates, I asked Mr Moore's departmental officers to explain to me the process by which they were consulted. Ms Penny Gregory of the minister's department said to me that there was no consultation.

Mr Humphries: That is not true.

MR STANHOPE: Let us go to the *Hansard*. The minister will recall that I then asked questions of the professor of psychiatry about her views on the prospect of people involuntarily detained in a psychiatric unit being required to give evidence, and the response was quite clear that it was not a prospect that she would ever be comfortable with or support. I cannot remember her precise words, and I hope I have not misquoted her, but her attitude was very much: "I do not think this is a particularly good idea." I am

sorry I did not bring the *Hansard* down to the chamber so I could do justice to the comments she made. I am sorry now that I did not bring down the comments from Ms Gregory and departmental officers in relation to the consultation process.

Mr Moore: Dr Gregory.

MR STANHOPE: I beg your pardon, and I beg Dr Gregory's pardon. Dr Gregory's advice was that there was no formal consultation at the time these provisions were first proposed by the government. That is why the Mental Health Tribunal has never taken evidence by audiovisual link. There isn't one. I understood from the evidence given to me at estimates that there probably never would be. I think everybody at the psychiatric unit thinks it is a particularly silly idea.

I have explained the point, and I can go through the exceptions. The Attorney makes much of the exceptions I alluded to in article 14 of the International Covenant on Civil and Political Rights. It acknowledges clearly that there are exceptions. I mentioned this before. The Attorney's attempts at Gary-ing me are simply not appropriate. The article reads—and I would expect this to be reflected in our laws and I would expect this to be reflected in the attitudes which our courts take:

> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order … or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons …

Of course it is accepted there are occasions when people will be excluded from the courts, but to suggest that we should institutionalise a system in which a person compulsorily detained under the mental health legislation in the psychiatric unit might never get to appear in person seems to me unnecessarily and unacceptably restrictive. We do not know for how long they will be detained. We are talking here about the possibility of a person being compulsorily detained on a judgment that they are a risk either to themselves or to the community—not that they have committed any offence—and that as a result of their perceived or alleged illness or mental state they should not be able to enjoy their liberty. We are suggesting that that person should, potentially, never have an opportunity to stand up before the tribunal that can determine whether or not any order that has been made in relation to their detention should be reviewed. Maybe they will never get the opportunity to look in the eye those people who make the final determination about their liberty. That is what we are debating here.

I cannot accept that it can ever be acceptable that that right should rest in the hands of the tribunal, as much as we respect and admire them, as much as we respect and admire the judges and the magistrates who make up the tribunal, as much as I respect and admire the staff at the psychiatric unit. But that is not the point. It is a spurious argument that the

Attorney raises that we are suggesting that we cannot trust our judges or our magistrates, or perhaps the staff at the psychiatric unit. That is not the point. It is not the point to say, "I put my liberty for the rest of my life in the hands of somebody else and I do not ever need the opportunity to stand up in front of them and plead a case as to why I should be released, as to why perhaps my mental condition is not as others say or assume or have diagnosed it to be."

We all have a right, surely, to say, "Somebody else will not make that decision for me. I will make the decision as to whether I want to appear in person, whether I want to stand up and look in the eye those people who will say to me, 'No, we want you locked up for another few years; you are obviously not a fit person to be granted your liberty.' " That is a fundamental principle. The Attorney should not deny that as a fundamental principle—the fundamental principle to protect one's liberty.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.42): Mr Speaker, on the question of the Mental Health Tribunal's taking of evidence from the hospital, there is not an audiovisual link between the hospital and the court because the rarity of the taking of evidence in that form would not justify the expense of putting in place a link between the two places. I might point out, however, Mr Speaker, that there are other places where a mentally ill person may give evidence remotely from a court. For example, I have to say with some regret that there are mentally ill people who from time to time pass through the Remand Centre. Such people may conceivably give evidence from the Remand Centre remotely, if that rare circumstance ever arose. They may also give evidence from places outside the ACT altogether, as is possible under the legislation.

We come back to the reality that the discretion is necessary, albeit very rarely exercised, is in accordance with the decision the Assembly has already made, is in accordance with the legislation in force in every other part of Australia and is in accordance with the qualifications which already exist on what Mr Stanhope describes as a fundamental right of appearance in Australian courts. Those qualifications are quite clear.

I note, in finishing my remarks, the comments of Mr Stanhope about having enormous respect and admiration for the Mental Health Tribunal. I note that it was the same chair of the tribunal, Mr Cahill, whose Children's Court Mr Stanhope last year inadvertently abolished at one point in the course of debate because of a lack of care in the legislation he was bringing forward. Mr Cahill's views about there not being a necessity to have a specialist children's magistrate were fairly contumeliously overridden. Mr Speaker, I think Mr Stanhope's protestations about the admiration he has for the head of the court is a little bit hard to accept.

MR STANHOPE (Leader of the Opposition): I seek leave to speak, under standing order 46.

Leave granted.

MR STANHOPE: It is a pity that Mr Osborne is not here. I do not know whether I need leave under standing order 46 to explain the mistakes the Attorney just made.

Mr Humphries: At the end of the debate is the usual place for that to occur.

MR STANHOPE: I will do it now whilst it is fresh in people's minds and they can be alerted to the fact that you consistently mislead, if not tell untruths, Attorney.

MR SPEAKER: Order! Come on.

Mr Humphries: Mr Speaker, I take a point of order on that. I also remind Mr Stanhope that the usual convention is for standing order 46 statements to be made at the end of the debate, not in the middle of the debate.

MR SPEAKER: You can use standing order 47.

MR STANHOPE: I am happy to make the explanation I want to make by leave.

MR SPEAKER: Would you mind withdrawing the implication too, please?

MR STANHOPE: I will withdraw if it is offensive to the Assembly.

MR SPEAKER: Thank you. You can use standing order 47.

MR STANHOPE: I am happy to do that. I seek leave to make a statement under standing order 47.

Leave granted.

MR STANHOPE: Mr Speaker, I did not introduce the legislation. It is Mr Osborne's legislation that the Attorney is slagging off at at the moment.

Mr Humphries: But you support it.

MR STANHOPE: Certainly Labor support it, but it is Mr Osborne's legislation that the Attorney is now slagging off at. He attributed it to me, so he got that wrong. The other assertion he made which is also wrong was that the legislation abolished the Children's Court.

Mr Humphries: It did.

MR STANHOPE: I took advice from the Office of Parliamentary Counsel on that, and the Office of Parliamentary Counsel, at least in the privacy of my office, was prepared to suggest that the Attorney was talking absolute bunkum. It is an issue that we probably should have got to the bottom of at the time.

Mr Humphries: So why did you support my bill to reinstate it?

MR SPEAKER: Order, please! Gentlemen, can we get on to the business before the house?

MR STANHOPE: The Labor Party supports a lot of legislation, Mr Humprhies. We supported that legislation because Mr Osborne did not push the point, and I regret that he did not. Once again, you made two false statements, Attorney. Firstly, you said it was my

legislation. It was Mr Osborne's legislation that you criticised. Secondly, on the advice available to me from officers of your department, you were talking bunkum. The Children's Court was never abolished, and it was never in threat of being abolished.

Question put:

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

The Assembly voted -

Ayes, 6	Noes, 9
Mr Berry	Mr Cornwell
Mr Corbell	Mr Hird
Mr Quinlan	Mr Humphries
Mr Stanhope	Mr Kaine
Ms Tucker	Mr Moore
Mr Wood	Mr Osborne
	Mr Rugendyke
	Mr Smyth
	Mr Stefaniak

Question so resolved in the negative.

Amendment (**Mr Humphries'**) agreed to.

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

Page 15, line 12, before the proposed amendments of the *Interpretation Act 1967*, insert the following amendment:

"Guardianship and Management of Property Act 1991

Subsection 36A (1)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".

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

Page 15, line 21, before the proposed amendments of the *Residential Tenancies Act 1997*, insert the following amendments:

"Judicial Commissions Act 1994

Subsection 43A (1)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.

Magistrates Court Act 1930

Paragraph 54A (2) (a)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.

Subsection 72A (3) (definition of *audio visual link*)—

Omit the definition, substitute the following definition:

'***audiovisual link***—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 14.'

Subsection 254B (1)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.

Magistrates Court (Civil Jurisdiction) Act 1982

Subsections 187 (7A) and 482 (6)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.

Mental Health (Treatment and Care) Act 1994

Paragraph 90 (5) (ca)—

Omit '85AQ (1) of the *Evidence Act 197*', substitute '30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991'*.

Subsection 91A (1) —

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".

MR STANHOPE (Leader of the Opposition) (11.51): I move:

Proposed new amendment of *Magistrates Court Act 1930*, insert the following amendment:

"Subsection 72A (1)—

Omit the subsection, substitute the following subsection:

" '(1) The court may order that an application by a person for bail be heard by audiovisual link if—

(a) the person is in custody and is required or entitled to appear, or is required to be brought, before the court for the hearing of the application; and

(b) an audiovisual link is available between the place where the court is sitting and the place where the person is in custody; and

(c) the person consents to the making of the order.'.".

I have probably said everything in relation to my amendments generally that I would wish to say. I will not speak to this amendment.

Amendment (**Mr Stanhope's**) to **Mr Humphries'** amendment negatived.

MR STANHOPE: (Leader of the Opposition) (11.52): I ask for leave to move amendments Nos 3 and 5 circulated in my name together.

Leave granted.

MR STANHOPE: I move:

Proposed amendment of *Mental Health (Treatment and Care) Act 1994*, proposed amendment of paragraph 90 (5) (ca), omit the amendment, substitute the following amendment:

"Paragraph 90 (5) (ca)—

Omit the paragraph.

Proposed amendment of *Mental Health (Treatment and Care) Act 1994*, proposed new amendment of section 91, insert the following amendment:

Section 91—

Omit all the words after 'attends', substitute 'before the tribunal as required'.

Proposed amendment of *Mental Health (Treatment and Care) Act 1994*, proposed amendment of subsection 91A, omit the amendment, substitute the following amendment:

Section 91A—

Repeal the section.".

As I have said, Mr Speaker, the suite of amendments that I move to this bill all relate to the same subject: namely, the issue which we have just had a debate on, that is, the right of mentally ill people and remandees to have the discretion at least to appear in person. The Assembly has rejected the good sense of my amendments. They are a suite of amendments. They go together. They have been rejected by the Assembly. I maintain my position in relation to all of them, but I will not labour the point.

Amendments (**Mr Stanhope's**) to **Mr Humphries'** amendment negatived.

Amendment (**Mr Humphries'**) agreed to.

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

Page 16, line 9, proposed amendment of the *Residential Tenancies Act 1997*, insert the following amendment:

"Subsection 96A (1)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".

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

Page 16, line 11, before the proposed amendments of the *Tenancy Tribunal Act 1994*, insert the following amendments:

"Royal Commissions Act 1991

Subsection 34A (1)—

Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.

Supreme Court Act 1933

Subsection 55A (4)—

Omit the subsection, substitute the following subsection:

'(4) In this section—

audiovisual link—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 14.'.".

Amendment (**Mr Stanhope's**) to **Mr Humphries'** amendment negatived:

Proposed new amendment of *Supreme Court Act 1933*, proposed new amendment of section 55A, insert the following amendment:

"Subsection 55A (1)—

Omit the subsection substitute the following subsection:

'(1) The court may order that an application by a person for bail be heard by audiovisual link if—

(a) the person is in custody and is required or entitled to appear, or is required to be brought, before the court for the hearing of the application; and

(b) an audiovisual link is available between the place where the court is sitting and the place where the person is in custody; and

(c) the person consents to the making of the order.’.”.

Amendment (**Mr Humphries’**) agreed to.

Schedule 1, as amended, agreed to.

Remainder of bill, by leave, taken as a whole and agreed to.

Bill, as amended, agreed to.

PERIODIC DETENTION AMENDMENT BILL 1999

Debate resumed from 25 November 1999, on motion by **Mr Humphries**:

That this bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (11.55): Mr Speaker, this bill was introduced by the Attorney-General on 25 November 1999. It inserts a new section 28A into the Periodic Detention Act 1995 and amends section 29. The new section 28A permits a person already subject to a periodic detention order who is arrested and held in custody for a whole detention period to be taken to have served the detention period. A detention period is defined in the act but in practice means from 7 pm on Friday to 4.30 pm on Sunday. As an example, this proposed new section applies to a person already subject to a weekend detention order being arrested for another offence on Friday and kept in police custody until a court appearance on Monday morning. In that case the person is deemed, by this new provision, to have served their weekend detention, even though in custody for another offence.

The section 29 amendment provides that, where a person who is subject to a periodic detention order is committed to prison for another offence for a period of one month or more, the periodic detention order is automatically cancelled. Where the new sentence is for less than one month, the court has a discretion to cancel the periodic detention order.

Both provisions seem fair to periodic detainees and, as the Attorney said in his presentation speech, recognise some practical realities in the administration of the periodic detention scheme. However, there are some other practical difficulties that are not addressed in the legislation, and to some extent perhaps it would be difficult to address some of them legislatively. I note, for instance, from the last quarterly output report from the Attorney’s department that attendee numbers at the Periodic Detention Centre are continuing to climb. In answer to a question on notice, the Attorney has informed me that offenders are permitted two absences before they are breached. In the event that the offender does not comply with a third and final notice, breach action is initiated.

The Attorney also informed me that, in the 12 months ended 1 April 2000, 23 offenders had their sentences extended by one period for non-attendance, 46 offenders had their sentences extended by two periods for non-attendance, and leave of absence was granted on 117 occasions. Given that offenders are permitted three absences before being

breached for non-attendance, and that there were in total only 58 detainees or clients in the period mentioned—that is, the 12 months up to 1 April 2000—it raises some questions about the efficacy of the periodic detention program.

One would also have to question the need for the provision contained in this bill. The fact that detainees are being arrested on Friday and held by the police until Monday morning, rather than appearing at the Periodic Detention Centre, is not listed among the reasons given in the Attorney's answer to my question for granting leave on the 117 occasions that offenders did not appear. One hundred and seventeen leaves of absence were granted by the Periodic Detention Centre in circumstances where the detainee presented an accepted reason for not turning up for periodic detention. Most of those reasons are medical.

It is interesting that, on the 117 occasions, leave of absence was granted for an ostensibly acceptable reason or excuse, namely, medical grounds or work commitments. I understand from the advice the Attorney gave that work commitments are no longer a reasonable reason for not turning up to periodic detention. It is an interesting concept that one can ring and say, "I have to go to work over the weekend, so I cannot turn up for periodic detention." Other reasons are "reported late"; "welfare of parent", which of course is reasonable; "welfare of self", whatever that means; "welfare of child"; and to attend a christening or to attend a funeral. They of course are reasonable excuses. But in that list of reasons for non-attendance for which a leave of absence was granted on 117 occasions the notion of being held in detention over the weekend does not appear. I am not entirely sure whether this apparently practical amendment we are facilitating here is, in practice, a particularly grave issue.

I am concerned, however, about the declining use of periodic detention. I am also concerned about the declining use of community service orders. A significant decline is reported in the Attorney's answer to my question. There was a 28 per cent reduction in the use of periodic detention in the last 12 months as compared to the previous 12 months. That perhaps warrants some scrutiny. There is also a much less but a nevertheless significant continuing decline in the use of community service orders. They are two issues that raise some questions about sentencing policy.

It is interesting that in the answer I have been given Mr Humphries suggests that he cannot explain, but no reason is given in the data. The Attorney says that the reason for the decrease in the number of periodic detention orders by the courts and the decrease in the number of community service orders by the courts is simply unknown. I think it is a matter of concern that we do not know why the courts are not using the periodic detention option or the community service option to the extent that they once did.

If periodic detention is in decline and community service orders are in decline, if the Belconnen Remand Centre is simply bursting at the seams, as we know it is, then one wonders what has generated this shift in sentencing practices that it seems, on the basis of the lack of information we have, is occurring in our Magistrates Court. I think there is a major issue for us as a community, particularly in the ongoing debate about the development and construction of a prison in the ACT.

These are the sorts of things that we need a handle on. Why is it that our Magistrates Court is not using periodic detention nearly as much as it did even 12 months ago? A decline of 28 per cent in one year is a very significant decline in periodic detention. There is also a continuing decline in the use of community service orders. A significant number of offenders are simply not turning up for periodic detention. In that same 12-month period, 23 offenders had their sentences extended because they did not bother to turn up for a particular weekend. Forty-six offenders had their sentences extended by two periods for non-attendance, a more serious breach of their periodic detention order. On 117 occasions leave of absence was granted, when the total number of offenders was only 58.

There are some genuine issues to be pursued in relation to the granting of periodic detention orders, the use of alternative sentencing options by our courts and the way in which periodic detention is currently being managed, particularly in light of non-attendance by offenders, though I do note that they are generally chased up. I raise these issues as a serious concern and suggest to the Attorney that these are issues that might usefully be pursued. I would be interested in hearing from the Attorney whether or not he would share those concerns about the need for us to know exactly how sentencing is proceeding in our Magistrates Court and whether or not he or his department has given some thought to inquiring into these matters.

I have just received a note from my staff that suggests that my quoting of the 28 per cent decline this year as against last year might not be correct. It is a 28 per cent decline perhaps since the Periodic Detention Centre first operated and it is not a year-to-year figure. I apologise if I have made a mistake.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (12.03), in reply: Mr Speaker, I thank the opposition for its support for this bill. I think it is an important bill to ensure that the calculation of periods of service at the Periodic Detention Centre reflects, in effect, the commitment of a person to serve out their period of periodic detention. The amendments being proposed today by the government are designed to reflect the reality that some flexibility is needed in arrangements. I think Mr Stanhope summarised well what the legislation is designed to do, and I do not disagree with anything he had to say in that respect.

Mr Stanhope raised other questions more broadly about periodic detention and community service orders in the ACT. I am quite happy to take up those issues as he raised them. First of all, I might make a comment about the use of particular sentencing options and how they are being used by the courts at the moment. It is true to say that our courts fairly jealously guard unto themselves the policies which are used for the sentencing of people convicted of crimes in the ACT.

I have suggested on occasions that there should be a broader community debate about sentencing and about how courts exercise the discretion to sentence to a period of imprisonment or to use another penalty. The uniform reaction of the bench is that these are matters which are solely for the bench and should not be matters for political debate. Therefore I suggest that, although it would be healthy to have perhaps some further discussion about the principles that members of our benches use when sentencing people, it would not be likely to be one that members of the bench would engage in, at least without some jealous guarding of their discretions in that respect.

It is true that there has been a decline in the use of periodic detention since the Periodic Detention Centre first opened. I have a theory about that. I think the answer as to why that occurs is that it was overused when it was first created as an option for ACT courts. Members will recall that the legislation provides that a person may be diverted to a period of periodic detention where otherwise they would be sentenced to a period of imprisonment. If, however, you add together the people who in recent years have been imprisoned and those who have been sentenced to periodic detention, you will see an enormous explosion in the number of people who, but for periodic detention, would be going to jail.

I suspect there has not been a rise in crime to the extent that would warrant such an explosion, not to that degree anyway, but rather that a net widening has been experienced as a result of the additional availability of periodic detention. That is, some people who would otherwise not have been sentenced to jail but who have committed serious offences which magistrates and judges feel need to be punished in some way other than a fine or community service order or whatever it might be have in recent years been going into the PDC, an option available to the courts. In other words, what I am suggesting is that in reality, if the PDC did not exist, some of those people would not go to jail. To that extent there has been net widening.

I know the courts will deny that that is the case. As I recall, the legislation requires that a person must be otherwise facing a sentence of imprisonment before the option of PDC can be used. But it is a natural human reaction, I suspect, to sentence people in those circumstances to periodic detention where a court feels that they need a level of serious punishment which falls short of being sentenced to imprisonment.

I do not say that, as a matter of policy, I think it is a bad thing that there should be some net widening. I warned about the danger of net widening when the legislation was originally put forward back in 1994, but on reflection I think that some net widening is not necessarily a bad thing. However, I would respectfully suggest from my position as Attorney-General that the courts may have experienced some disillusionment with PDC in some cases and have determined that it should not be as widely used as it was originally when the option was first created.

That, I think, explains the reason that periodic detention is now in some decline. It is, however, extensively used. I would not say it is by any means a dead letter. It is still a very valuable option, and for some people it is an effective way of denoting community concern with the conduct that they are convicted of and perhaps of engineering a change of heart on the part of these people.

As to the declining use of community service orders, I note that some time ago Mr Stanhope issued a media release angrily demanding to know why the government was making less use of community service orders. The answer to Mr Stanhope's concern is that the government makes no use of community service orders. We do not have the power to impose community service orders. It is the courts of the territory that impose community service orders.

Mr Moore: And so it should be.

MR HUMPHRIES: And so it should be, as Mr Moore points out. Mr Stanhope's media release should have been directed, I would suggest, more appropriately to that court or those courts for which he has such great admiration and respect, as referred to in earlier debate today. I do not know the reason the courts, not the government, are making less use of community service orders. It would be useful to have a debate with the courts about that. In fact, I have had some discussions with members of the courts about sentencing policy, mainly on a one-on-one basis.

Perhaps as we move closer to the creation of a full-time ACT correctional facility, including a new remand centre and perhaps a new PDC within that framework, we need to think about how, as a community, we have a debate about a matter which traditionally has been exclusively the preserve of judges and magistrates, except of course for legislation, which generally sets only a maximum penalty to which people might be sentenced for particular crimes.

We will not enter the debate about minimum sentences this time, but the extent of community debate, until recently at least, has been limited to what the maximum sentence the law provides for a particular offence. How within that very broad framework a decision is made about the period of imprisonment or what other penalty a person should be subject to is a matter which has been exclusively the preserve of judges and magistrates and perhaps should be the subject of broader community debate at this time.

Mr Speaker, I thank again the opposition for its support for the Periodic Detention Amendment Bill, and I hope that we can continue to develop a debate about sentencing in the ACT through the period between now and the opening of our new correctional facility some time in the next two years.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

INTERPRETATION AMENDMENT BILL 2000

Debate resumed from 9 March 2000, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

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

FIRST HOME OWNER GRANT BILL 2000

Debate resumed from 30 March 2000, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

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

PLANNING AND URBAN SERVICES—STANDING COMMITTEE
Report on Tree Management and Protection Policy for the ACT

MR HIRD (12.13): Mr Speaker, I present report No 44 of the Standing Committee on Planning and Urban Services entitled *An Appropriate Tree Management and Protection Policy for the ACT*, together with copies of the extracts of the minutes of proceedings. This report was provided to you, sir, for circulation on Wednesday, 26 April this year, pursuant to the resolution of the parliament of 1 July 1999. I move:

> That the report be noted.

Mr Speaker, I am delighted to table the committee's report, which is a unanimous one. Members will see that the report contains 27 recommendations. Taken together, they outline a tree policy for the ACT which is comprehensive and thorough. Members will see that we recommend a wide-ranging discussion about the final shape of a tree policy, using the committee's report as one of the key documents. We are very strong in recommending that a blanket treatment prevention order should not be introduced into the territory. We consider that the ACT community can generally be trusted to look after the trees on their leased land and that there is not enough evidence to suggest that a TPO is needed. However, we do recommend that the existing significant tree register be beefed up and that it cover some trees on private land as well as trees on public land. Further, we say that the community should be closely involved in establishing the criteria for placing trees on the significant tree register.

Another of our recommendations is that the territory government should put pressure upon the federal government to provide funds for tree policies. This is because the Commonwealth government initiated the marvellous tree heritage which the territory now enjoys, and these trees are widely perceived to be a key part of the national capital. The Commonwealth government should not be allowed to walk away from its responsibilities to keep the nation's capital blooming.

Mr Speaker, our report also calls for tree surgeons to be accredited to appropriate Australian standards, and we suggest that the Commissioner for the Environment regularly review the way the tree policy is implemented. We also say that greater attention has to be given by the ACT administration to five basic matters, including better town planning, greater resources for tree management, more tree research and more incentives to promote good tree care. Also, Mr Speaker, we ask for a better way to put a dollar value on trees so that we can be confident that the right amount of money is put aside for their long-term care and maintenance.

Finally, Mr Speaker, I should add that my colleagues and I enjoyed this inquiry. We learnt a lot. We took a great deal of evidence. We held four public hearings and received 30 submissions, and we appreciated the close interest by many in our community in this inquiry. On behalf of my colleagues, Mr Corbell and Mr Rugendyke, I would like to thank all the people who contributed to this report. I would also like to thank our secretary, Mr Rod Power. I commend the report to the house.

MR CORBELL (12.17): Mr Speaker, this is a very important report and again I join with my chairman, Mr Hird, and my colleague, Mr Rugendyke, in commending this report to the Assembly. It is a unanimous report and I think that underlines the importance of this issue and the extreme urgency with which this committee believes a range of issues needs to be addressed by the government in relation to tree management.

Mr Speaker, I was very pleased to propose to the committee at the end of 1998 that we undertake this inquiry and I was pleased that my colleagues agreed that that was appropriate. That coincided with the time at which the government released its draft inquiry into tree management and tree policy.

A number of issues have come out of the inquiry which I believe warrant particular attention. Mr Hird has mentioned some, but I would like to emphasise a number of others. The first relates to the development of a significant tree register. This is a very important step. It is a very important advance in the protection of Canberra's tree heritage and the tree asset. The significant tree register that the committee proposes would ensure that a range of trees are protected, both on territory land and on private leasehold land, and that amendments to the land act would be made to ensure that if these trees were to be altered or removed approval would have to be granted, similar to a development application under the land act as it currently stands.

The significant tree register the committee proposes is a considerable broadening of the current tree register that is in place in the ACT. We recommend that criteria be developed to identify those trees that warrant protection through a significant tree register. We believe that this should be done through a collaborative public consultation process because, clearly, the types and nature of trees and their contribution to the streetscape and amenity of suburbs will vary from area to area across Canberra.

Mr Speaker, we did feel it was important to emphasise that the type of significant tree register we were looking at was similar to the sorts of registers developed by a number of councils in New South Wales, including the North Sydney, Camden and Woollahra city councils. These tree registers do not just identify a small number of trees, as ours does in the ACT at the moment—virtually only a handful. These tree registers identify a broad range and variety of trees that warrant protection because they contribute to the amenity and the streetscape of an area and deserve to be protected. A similar process really should be developed here in the ACT. That is why we have recommended a significant tree register.

I should stress, too, Mr Speaker, that recommendation No 2 of the committee, which stresses that a blanket tree preservation order not be introduced at this stage, is the counterbalance to the development of a significant tree register. A significant tree register will protect a variety of trees based on a range of criteria which would include

age, height and species. We do not believe that a blanket tree preservation order is appropriate at this stage because that could protect a whole range of other trees which the community may not feel would be appropriate. The important thing to stress here is that public consultation is required on a very thorough basis to ensure that the criteria used to identify which trees go on the register is properly agreed upon and is representative of the community's view.

Mr Speaker, the other issue I want to raise is the impact of urban consolidation and redevelopment in Canberra on our tree asset. We received a considerable body of evidence which indicated that the current policy of urban consolidation, particularly in regard to dual occupancy redevelopment, was resulting in a major change taking place in many of our established suburbs. Suburbs such as Yarralumla, Deakin, Red Hill, Turner, O'Connor, Lyneham, Braddon and even Reid were highlighted as examples of where, through dual occupancy redevelopment, whole blocks were cleared of trees and significant hardstanding was put in place. Two or more dwellings were placed on the blocks and there was simply no room to have a tree canopy.

This has been referred to by a number of planning commentators as the greying of our suburbs. Urban consolidation is leading to the greying of our suburbs, the loss of tree canopy. This situation is one of considerable concern to the committee. We do not believe that this process should continue unabated and we have recommended that the government should immediately take steps to do a review of the impact of the dual occupancy policy on suburban streetscapes, particularly in established older suburbs. Mr Speaker, these suburbs are of considerable amenity and attractiveness. This is often reflected in the price that people pay to live in them. Their attractiveness and their amenity is greatly diminished if, through a policy of urban consolidation, we lose those very elements that make them attractive and pleasant places in which to live.

Mr Speaker, the final point I want to make about this report is the current inadequacy of the protection legislation we have in place at the moment. The committee's report and our inquiry highlight the fact that at the moment we have an absurd situation where trees are protected during a development process or a redevelopment process. They are properly identified, fenced, retained. But, Mr Speaker, as soon as the redevelopment or development is over, there is nothing to stop the lessee who has moved into the development stepping out of the back door on the following Saturday morning, revving up their chainsaw and chopping the tree down. It seems a fairly pointless exercise, Mr Speaker, to protect a tree during a redevelopment process and simply allow it to be cut down as soon as the building is finished. That is a situation that occurs in Canberra at the moment because of the inconsistent and patchy legislative framework.

It is interesting to know that in relation to new developments, greenfield sites in areas such as Gungahlin and Tuggeranong, we have situations where again trees are identified to be retained as part of the suburban subdivision design. They are retained throughout that process and properly protected; but as soon as the blocks are sold, the houses built and the residents move in, again there is nothing to stop a person stepping out of the back door and cutting the tree down. That is a fairly pointless exercise in protection, I would suggest, Mr Speaker, if it is not consistent.

There are a range of issues here which I believe the committee has addressed very thoroughly. I will conclude by stating that really this is an issue that is, I believe, beyond politics in this place, as much as any issue can be. The amenity and beauty of our city is unique. It is well recognised for not only its design but also its built landscape, which includes these trees. Trees are a very significant part of the Canberra landscape. Without them, we would be a windblown, dusty plain, cold in winter and hot in summer. Mr Speaker, we have to take all steps to protect the heritage of Thomas Weston, Lindsay Pryor and others. I believe that this report provides the pointers that the government must take up and act on in the interests of the community overall.

MS TUCKER (12.26): We obviously share the concerns about keeping our trees in Canberra, but the Greens have a slightly different response to the issues and to this committee report from that of the committee members themselves. We are disappointed with the committee's report, both in terms of its recommendations and also its presentation.

The committee's report is quite brief, particularly for an inquiry that has taken over 18 months to complete. I understand that the committee has made a conscious decision to reduce the size of its reports because of its workload. I sympathise with the issues of resourcing and the committee system, but I do think the committee should at least provide better justification of how it came up with its recommendations.

I would agree with all of the recommendations regarding the need for increased resources to be devoted to tree management within government and the need for accreditation of tree surgeons. However, I disagree with the key recommendations for the establishment of a significant tree register rather than a tree preservation order. I think there would be fairly common agreement that Canberra's tree coverage makes a significant contribution to the city's unique character, as well as being an important environmental asset. However, there is obviously disagreement, as I said at the beginning, within the community and this Assembly about how best to ensure that these tree assets are maintained into the future.

Unfortunately, the committee has not provided any reasoning as to why it believes that a register of significant trees would be better than a tree preservation order, a TPO, although Mr Corbell just said a few things. That is the first time I have heard any real arguments. His concern was that it would be inappropriate to give particular trees cover, which would be what would occur through a TPO, and that is where we also part company on the philosophical approach to the value of trees.

The idea of a register of significant trees is quite misleading. All mature trees are significant in their own right. They do not really need to be registered as such. Trees provide many benefits to people and to the rest of the environment. The real question that has to be addressed is how to balance the extent of tree cover in the city with the need to provide sufficient space for buildings, roads and associated urban infrastructure.

I agree, of course, that not all trees can be protected for as long as they live. In an urban environment it is true that you need to have the right tree in the right place. However, I am very concerned that, by having a register of significant trees, then all the trees that are not on the register become not significant by definition and therefore are able to be removed without further question.

When it is recognised that there are over 600,000 trees on private land in the ACT, and a similar number on public land in the urban area, the size of the register becomes an issue. I am very worried that the tree register will end up containing only a very limited number of trees, perhaps in the hundreds, but this is a very, very small proportion of the total number of trees. Perhaps this is the committee's real intention with the register—that it will only cover a handful of trees and just allow open slather on the rest.

My other major concern about a tree register is that the default situation is that a tree is not on the register. Someone has to take the initiative to put the tree on the register. You could set standard criteria for determining which tree should be on the register, but if you have a system where trees that meet the criteria are automatically on the register, then you, of course, have a de facto tree protection order anyway. The alternative approach, where somebody has to nominate the trees before they are put on the register, may mean that many significant trees could be lost just because no-one got around to nominating them.

There is also the question of what happens once a tree is nominated. There will have to be an assessment process and presumably an appeal process, so getting a tree on to the register will take some time. There will have to be an interim register and legislative protection of trees while they are being assessed.

There is also the issue of what obligations will arise on the householder if a tree on their property is listed on the register. What happens if they allow the tree to deteriorate, such as by pruning it inappropriately or damaging the roots? There might also be a long period of time from when a tree is nominated to when it actually comes under threat of being cut down. Will there have to be ongoing checks of the suitability of the tree for inclusion in the register?

There are big resourcing issues here. We do not want to get into the situation that we have with the Heritage Places Register where sites have remained on the interim list for years, and there are over 2,000 reported Aboriginal sites in the ACT that have not yet been assessed, all because there is a lack of government commitment to doing the work by providing the appropriate resources.

I believe that tree preservation orders are a simpler and more comprehensive approach to tree protection. Such orders are already in wide use, both in Australia and overseas. I should also point out that the committee's reference to a blanket tree preservation order is a bit misleading. Such orders do not provide protection to all trees. They usually only cover trees that meet a certain threshold in terms of species and size. They also do not stop trees being cut down. Orders usually provide criteria for when a permit would be given to remove trees, such as if it is too close to a building or if it is diseased. There would also be situations where no permit would be required, such as when emergency services personnel need to remove a tree damaged in a storm.

What they do do, however, is require the householder to provide adequate justification of why a tree needs to be removed. It is the reverse of the tree register. It assumes that all trees that meet the threshold criteria are significant and worthy of staying alive unless there are sufficient reasons to remove them. It also only comes into effect when the tree is threatened. There is no need to maintain an ongoing register.

In relation to other issues addressed by the committee, I do not think that the issue of protection of trees on building sites was adequately addressed. Firstly, there is the issue of whether the presence of trees on a development site is adequately taken into account in the design of the building going on the site and whether the development approval procedures in PALM are sufficient to assess the value of trees. Once construction work commences, the inclusion of a tree on a register or protected under a TPO is useless if they end up being damaged or killed by building work going on around them. It is not just a question of putting a fence around the tree, as currently occurs on some building sites. This practice has to be extended to all building sites and there has to be adequate checking to ensure that root systems are not disturbed or the soil around the tree compacted. Perhaps bonds should be placed on developers to cover any damage done to trees on the site.

There is much detail that needs to be sorted out about how the recommendations of this inquiry will be implemented. I am worried that the longer it takes to get a tree protection regime in place, the more trees will be removed in the interim. There may be lots of trees in Canberra, but Canberra is reaching an age where redevelopment of the original buildings is now occurring and many original tree plantings are being lost.

In the newer suburbs we are also losing many of the remnant native trees as residential subdivision expands into former rural areas and patches of remaining woodland. Of course, it is possible to plant new trees, but there is a big difference between a mature tree and a seedling. It has to be remembered that trees not only have a value in themselves but also provide habitat to many other creatures who cannot wait around until a new tree grows.

I would therefore urge the government to move quickly in preparing its response to this report so that we can get on with saving some trees.

MR SMYTH (Minister for Urban Services) (12.34): Mr Speaker, the government accepts the report from the committee. The Urban Services and Planning Committee is clearly one of the hard-working committees of the Assembly. This is report No 44, and we will get to another three reports today that they have been working on. I thank the committee for their work. The government will respond in time.

Mr Berry: Mr Speaker, I was going to adjourn the debate.

Mr Humphries: Just pass the motion.

MR SPEAKER: Just pass the motion. The government has to come back with a response.

Mr Humphries: We will have the debate when the response comes back.

Question resolved in the affirmative.

Sitting suspended from 12.35 to 2.30 pm.

QUESTIONS WITHOUT NOTICE

Goods and Services Tax—Small Business

MR STANHOPE: My question is to the Treasurer, who would be aware of the high level of concern in the small business community about the introduction of the GST, concerns that go to matters such as the lack of quality information, compliance costs and the effect of the tax on cash flows. Can the Treasurer say what analysis he has made of the effect of the GST on businesses in the territory? Will he release the results of any such analysis? What representations on these matters has the Treasurer made to the federal Liberal government on behalf of small business in the ACT, or has he simply sacrificed the small businesses of the ACT to his commitment to the Howard government?

MR HUMPHRIES: Mr Speaker, it is terribly heart-warming to see the Labor opposition concerned about the plight of small business. I had not detected any great concern or empathy for their position until today. The change of heart is most welcome. Mr Speaker, the ACT government, like all other Australian governments, is a signatory to the intergovernmental agreement on tax reform, which provides for the implementation of a new tax system, as agreed at the meeting of premiers, chief ministers, treasurers and the Prime Minister at least a year ago and attended by the then Treasurer, the Chief Minister, where the details of the goods and services tax were handed out. Subsequently, of course, the agreed package was put to the Australian parliament, including the Australian Senate, and a number of changes were made to the terms of the legislation.

Mr Speaker, that framework is a given which has been accepted not just by the ACT government but also by the other Australian governments, notwithstanding some debate and argument about the terms of that framework before it was put in place, namely, before it went through the Senate. However, there are other details which have been very much matters of debate and discussion in the meantime. One of those matters has been the application of the goods and services tax to state and territory fees and charges. The ACT has made representations about which fees and charges should be exempt. I am pleased to say that the recommendations or submissions of the ACT government have been accepted in full. There have also been issues for us to consider about the impact of the GST on particular organisations, particularly non-government organisations.

Ms Carnell: Which we have already announced.

MR HUMPHRIES: The Chief Minister announced yesterday that there was to be a general forgiving of imbedded wholesale sales tax savings made by those non-government organisations. The input credits will be fully repayable to the community organisations where they are registered for GST and the savings that they make from the imbedded wholesale sales tax being removed will be retained by those organisations; it will not be clawed back by the government. Some small businesses in that category are certainly going to benefit from that arrangement, Mr Speaker.

The ACT government will continue to put the case that the GST needs to be an equitably applied taxation reform. There is more work to be done, particularly by the federal government, in making implementation decisions about the legislation. We will continue to be involved in a dialogue with the federal government about that. As I have said, the framework is a given. We do not propose to take up the cudgels for further structural change in that framework any more than any other Australian government proposes to do at this time.

I think that the impact on small business is very clear in terms of the overall effect on the Australian economy of having a clear and much-needed reform of the taxation system. There are, admittedly, significant problems in some small businesses in terms of adjusting to the GST, problems which organisations such as the chamber of commerce are addressing through a number of seminars, information evenings and so on; but the fact remains that, to my knowledge, Australian business, both large and small, has welcomed these reforms, has agreed that the reform of our taxation system is a long overdue and very necessary reform and has embraced the concept, even if individual businesses will face difficulties in implementation, particularly those that are not well prepared.

In that context, the government believes that it is very important for small business to take the time to understand how the new system will work. I spoke just today with the chief executive of the chamber of commerce about the program being undertaken by them to educate people. They are conducting 22 different seminars on the GST—some for the whole of the private sector and some for specific sectors, such as manufacturing and retail. That is a very important thing for them to be doing.

In terms of the tax generally I simply say that, although there will be pain in implementation, the tax is a vitally important reform for our nation and we believe that it needs to happen. I do recall that the Premier of New South Wales, Mr Carr, was one of the first state leaders to want to sign up to the tax. He accepted that it needed to happen and was one of the first to come forward and sign on the dotted line.

I am advised that the feds knocked back one of our fees, the burial and cremation fee. My note says that it is a dead issue, so I will not will not pursue that matter. Overall, the government's representations on the application of the GST to government fees and charges were accepted. If industry, small businesses in particular, takes the time to find out about the impact of the GST, it should not be an intolerable burden. There should be a satisfactory transition for businesses that are well prepared and the effect on Australia's economy generally should be a very positive one.

MR STANHOPE: I have a supplementary question, Mr Speaker. Given the concern of small business about the application to them of the GST, which the Treasurer just acknowledged but concedes he has done nothing about, is the Treasurer at all concerned about the disgraceful misuse by the federal government of $360 million of public money on a glossy campaign to promote its GST-based tax reform?

MR SPEAKER: The question is asking for an opinion.

MR HUMPHRIES: Yes, it is, Mr Speaker. Let me say that I have no opinion about the federal government's advertising campaign, except to say that if members want information to be out there about how the new system is going to work, they have to expect that there will be some glossy advertising to go with it. I have not followed the details of what has been put out, but there was plenty of glossy advertising for initiatives of the former federal Labor government in all sorts of areas. In, I think, 1986 the federal government went on with a major advertising campaign about the number of jobs it had created since it came to office. I am not sure what public utility was being served by that campaign. At least the federal government's present campaign is designed to educate people about change, rather than just crowing about something that has already happened.

Mr Stanhope was asking about the reaction of small business to the GST and how it was going to impact on small businesses in the ACT. It is worth reflecting on what the chamber of commerce discovered in its March survey of business in the ACT. That survey found that 77.5 per cent of businesses believe that the ACT economy will perform as well or better over the next three months as against the last three months, compared with 75 per cent for the national economy. Obviously with that number of businesses feeling positive about the future, the GST is not necessarily the very large dark cloud that some people are making it out to be.

Eighty-eight per cent of businesses believe their general business conditions will remain positive, compared with 75 per cent in the last quarter, and 89 per cent believe their total sales revenue will remain positive, compared with 76 per cent for the previous quarter. One very interesting figure is that 57 per cent believe that their export sales will improve, 43 per cent that it will stay the same. No-one believes that it will decrease, which is very interesting. That shows that Canberra businesses are very much moving to sell their services and products outside the territory, outside the region, and are not relying on the federal and ACT governments as the sole or primary sources of business activity, as they have in the past. Businesses are also showing an increased confidence, with the number of firms expecting their profitability to improve over the next quarter, almost trebling the figures for the last quarter—from 5.5 per cent to 14.8 per cent.

Ms Carnell: So much for everyone being paranoid.

MR HUMPHRIES: Yes. It does not sound to me like they are all clutching their heart and collapsing onto the carpet, Mr Speaker. It sounds like a business sector which is actually prepared to embrace the challenge of the future and is being quite positive about it. Employment levels continue to improve, according to the survey. Ninety-four per cent of the businesses in the ACT are expecting the same or higher employment levels in the next three months. That is a pretty impressive set of figures. It is a pretty impressive indication of the views of the business sector of the ACT about the future.

I do not think that there is any concern on the part of small business generically about the final effect of the GST. Obviously, they are concerned about implementation issues. It is a little like a business expanding, taking on a new area of activity and embracing a new aspect of an enterprise; it presents challenges. There are pitfalls and there are dangers, but you do not do it unless you believe that it is actually going to achieve something worthwhile. Clearly, businesses in the ACT believe that there are some positive signs on

the horizon. I note, incidentally, that the Yellow Pages small business index found in February of this year that a net balance of 54 per cent of ACT small business proprietors were confident about their business prospects for the coming 12 months.

Ms Carnell: It is not just the chamber.

MR HUMPHRIES: It is not just the chamber. I know that those opposite would like to say that everyone is falling apart over this matter, Mr Speaker, but clearly they are very positive.

Members Staff—Travel

MR HIRD: Mr Speaker, this is a first for me. My question is directed to you, sir. It concerns a study trip taken by the Leader of the Opposition, Mr Stanhope, to Burnie in Tasmania in February last for a meeting of Labor leaders. Mr Speaker, you will recall that in 1995 Mr Stefaniak repaid $405 after pressure from the ALP because his senior adviser attended a meeting of coalition education policy advisers in Melbourne. I notice that Mr Stanhope's study trip report, brief as it is, identifies a cost of $277.50 paid from training allocations. Is it acceptable practice of the parliament to use training allocations for staff to attend party political events? If so, will you consider a request from Mr Stefaniak to refund the $405 which he repaid in 1995?

MR SPEAKER: I do not recall the details of the 1995 incident. If I did, I would probably be on *Who wants to be a Millionaire*. I will take the matter on notice and give you an answer in due course.

MR HIRD: Mr Speaker, perhaps you will also take on notice that in 1995 Mr Berry said, "The minister has now been embarrassed enough to agree to pay back the $405 used for the trip, which was clearly a party political function." Mr Speaker, if you do not refund the $405 to Mr Stefaniak, will you ask the Leader of the Opposition to repay the $277.50 paid by taxpayers of the ACT for the staffer to attend what was clearly a party political function?

MR SPEAKER: Mr Hird, as I said in answering your first question, I will take the matter on notice and investigate it.

Drug Use Study

MR KAINE: My question is to the Minister for Health and Community Care. I do not often ask him a question, but I think that this one is a bottler. My question relates to a matter which was reported in the *Canberra Times* on 29 April. The report so astonished me that I checked the date to be sure that it was not some misguided April Fools' Day joke. It referred to a decade-long study by an Australian National University researcher into the activities of a group of 40 illegal drug users in the ACT—a study which, by the way, came to the unsurprising conclusion that the illegal use of heroin by these people, who call themselves Oswaldians, made them as susceptible to heroin addiction as other illegal drug users.

In that report the minister was referred to specifically. It was said that he assisted in his role as an MLA with a special interest in the illegal drug use and that Mr Moore arranged for the project to be covered by the ACT Epidemiological Studies (Confidentiality) Act. There's a mouthful for you, but Mr Moore was alleged to be personally involved in this study.

Minister, were the Epidemiological Studies (Confidentiality) Act 1992 and the regulations subsequent to this act which you signed off personally intended to cover the so-called Oswaldian study or other similar studies? Was this study considered to be a legitimate research project recognised by your government. If so, what were the overriding imperatives of this study that allowed for its details to be kept secret for 10 years from both the wider community and the members of this place?

MR MOORE: Thank you, Mr Kaine, for your first question ever of me.

Mr Kaine: I thought you would enjoy it.

MR MOORE: Thank you. And an interesting one it is, too. Let me say that there is no secrecy here. The PhD study was published and peer reviewed and there were all the normal things that go to a particular study. My role was simply with regard to the Epidemiological Studies (Confidentiality) Act 1992 when it was put before the Assembly. I just asked Mr Humphries to go and grab me a copy because my recollection is that this study was specifically named in the act itself. Mr Speaker, I think I am right. I will check that for Mr Kaine anyway and speak to him. Certainly, we were aware of that study at the time.

The real motivation behind that act, you may remember, was to do with the heroin trial being proposed, saying that if there was going to be a proper epidemiological study in terms of the act, what we would have to do would be to make sure that the information could not be used by police for prosecution purposes because as soon as that happened it would become impossible to do a study as people would refuse to give that information. That was supported, as I recall, by Mr Kaine. In fact, as I recall, it was unanimously supported by the Assembly, as indeed it would have been. As I recall, it actually named the Canberra study. The Canberra users study was its short name and I think it was actually named at the end of that act. The long name of it is "Scene Changes, Experienced Changes—a Longitudinal and Comparative Study of Canberrans who use Illegal Drugs".

Mr Kaine, one of the interesting notions that were around in 1992 was that it was possible that people could use heroin in the same way as they used alcohol. Many people use alcohol; some people become addicted. The Oswaldians and others like them argued that you could actually use heroin over a long period and not become addicted. Dr Dance's study for her PhD was to assess whether that was the case. Whilst you do not find it surprising because the media always say that it is the case that if you use heroin you become addicted immediately, it has turned out from her report that where people intend to use over a long time they are likely to become addicted, whereas we do know that there is a large number of people who use for a very short while and do not become addicted to heroin—in the order of 90 per cent of the people who try heroin do not become dependent. But the importance of the study that Dr Dance did was that it completely floored that notion. I am very pleased to say that it is quite clear-

Mr Kaine: I notice that you are being prompted by the Attorney-General.

MR MOORE: Thank you. I did ask the Attorney-General to look at the act and it actually does refer to the Canberra drug users study and their networks and HIV, which was the name of this study at the time. The act actually identifies the one being conducted by Dr Dance. I have to say to Mr Kaine that he supported in exactly the same way as I did the coverage of this study by the epidemiological studies act, as indeed he rightly should. Remember that it was a study that was established under somebody's PhD. It was peer reviewed. It went through all those processes including, I presume, the ethics parts and so on. I think it was a worthwhile study. I must say that I am very pleased that it was covered by the epidemiological studies act. Indeed, as you would be aware, if I could say this as an aside, the supervised injection room trial also should be covered by the epidemiological studies act to ensure that we get the best possible outcome from these studies so that we can get more and more information on the study of drug issues, which are incredibly difficult to study because of the nature of their illegality.

MR KAINE: I have a supplementary question, Mr Speaker. I presume that the Oswaldians, whoever they were, provided their own illegal drugs. Assuming that that was so and that they were carrying out illegal activities, were they carried out with the knowledge of the Australian Federal Police and the Australian Customs Service or without it?

MR MOORE: It was hardly a secret study. It was here in our act. I certainly know that the police—

Mr Kaine: Is the answer to that confidential?

MR MOORE: No, nothing is confidential about it. I am sure that Dr Dance will be delighted to give you a briefing on the outcomes and the intricacies of her particular study. It is interesting to note that quite a number of people, as they grew older, did move away from the Oswaldians and did give up using heroin. But the overriding thrust of the study was that it was addictive, that people do become addicted even though they think they are not going to. I should also say in answer to Mr Kaine's specific question about whether the illegal substance they used was provided by themselves, it was not provided through the study. It was a style of study where Dr Dance was observing the actions of these people, not participating in them.

Ms Carnell Or encouraging or accepting them.

MR MOORE: Or encouraging them, yes.

Housing—Newsletter

MR QUINLAN: My question is to the minister for housing. Minister, I recently received a copy of the ACT Housing newsletter "Autumn Edition". It is a fairly small publication, being of a few pages, but of high quality. Minister, this publication contains six photographs, three featuring you. This publication includes several articles, most featuring you. This publication has a crossword at the back and you feature in the

answers to the first two questions. I would be fascinated to know how much it costs in terms of production and distribution to put out this information. I was going to say "propaganda", but I did not want to be ruled out of order. How much does it cost the ACT taxpayer?

MR SMYTH: The answer is that I will have to take the question on notice and find out the costs of the publication. But if you are out there doing things in housing, as this government is doing, to help develop the social capital of the ACT, then it is worth reporting.

MR SPEAKER: Do you have a supplementary question, Mr Quinlan?

MR QUINLAN: Yes, Mr Speaker. Consistent with the government's current orgy of launches, openings and persistent PR verballings, I guess we can expect them to continue to feature the minister. Minister, in the next edition will you be part of the joke of the week?

MR SMYTH: The only joke here is that the Labor Party has no policies on which to compare itself with the government and that it is embarrassed by the government's performance. It is this government that is building up social capital in the ACT. It is this government that is delivering social justice for its tenants. It is this government that is addressing the real concerns of the people of the ACT and the Labor Party just wallows.

Housing—Tuggeranong Office

MR OSBORNE: My question is to the Minister for Urban Services, Mr Smyth. It is not about a crossword. Minister, could you please inform this Assembly of your plans for the housing department office in Tuggeranong? Is it true that you are considering closing it down? If so, what studies have been done into the impacts of this move on small business and housing tenants in the valley, should it happen?

MR SMYTH: Mr Speaker, that was a good question from Mr Osborne about services that affect our constituents. The current lease on the housing office will expire on 30 June. Unfortunately, we were not able to renew it—it has been leased to somebody else—so we have been forced to look at the way we deliver our services, which is a good thing because you should always review the way that you are delivering your services.

We will maintain a counterfront service in the Tuggeranong Valley, which is what the majority of our tenants see. They come to the counter and simply meet with the two or three staff on counter duty. There are a number of staff behind the scene, as it were, but they do not necessarily have to be in Tuggeranong. I have asked the department to look at options. Those options would include better service delivery and whether we have our housing officers using laptops and mobile phones and going out in cars to visit the tenants where they are, rather than forcing tenants to come to visit us.

MR SPEAKER: I call Mr Osborne for a supplementary question.

MR OSBORNE: It all sounds very ominous for the housing tenants in Tuggeranong. Minister, can you now confirm that you will be running in Molonglo, not Brindabella, at the next election, given that it appears that you are not willing to stand up for your current electorate?

MR SMYTH: Mr Speaker—

MR SPEAKER: There is no question. That does not refer to your portfolio, minister.

MR SMYTH: It could have been answered by saying who got more primary votes in the Brindabella electorate at the last election.

Housing—Maintenance

MR WOOD: I have a question for the minister for housing, Mr Smyth. Minister, you know, as we all do, that maintenance is one of the most significant issues in public housing in the ACT. Many of the calls I receive and take through to your office are from constituents with problems concerning maintenance of their ACT Housing properties and the difficulty in keeping houses up to recognised standards. On departmental figures, not mine, the estimated cost of the maintenance backlog runs into millions of dollars. In September 1995 it was estimated to be $65 million. The 1998–99 ACT Housing ownership agreement states, "Requests from tenants for refurbishment continue to exceed the financial capacity of ACT Housing to supply."

Minister, from 1 July routine maintenance for existing tenants, as distinct from what has applied before with new tenants, will also come under the provisions of the Residential Tenancies Act. I would like to know and the tenants would like to know what provisions have been made to ensure that urgent and non-urgent maintenance will be done without tenants having to resort to the Residential Tenancies Tribunal—in fact, that ACT Housing will comply with the Residential Tenancies Act.

MR SMYTH: Mr Speaker, that was a good question from Mr Wood. I acknowledge his concern for the tenants of ACT Housing, as is the government concerned. Over the period that I have been minister for housing I have made no bones about the fact that the housing stock that we have is inadequate and does not meet the needs of our tenants. We have independent assessments that tell us that. One of the ironies of Canberra as the youngest capital in the country is that we have actually ended up with the oldest housing stock because that is what the Commonwealth gave us a decade ago. This government has been working very hard to make sure that the balance of stock is shifted from locations that are not necessary to ones where the tenants would like to be and that we actually change the nature of the stock to meet the needs of the tenants as well.

We have a huge number of old three-bedroom ex-guvvies whose tenants are now saying that they would prefer to be in townhouses or flats, one or two-bedroom accommodation. We are working on that. You can see that in the work that we are doing in renovating Macpherson Court, Lachlan Court and Burnie Court. We are trying to address those needs as best we can. The age of the stock and the inappropriate nature of the stock bring with them this backlog of maintenance and we are aware of that. We are also aware that under the Residential Tenancies Act we have obligations that will come into place on 1 July and we will be working to live within our commitments there.

MR SPEAKER: Do you have a supplementary question, Mr Wood?

MR WOOD: Yes, Mr Speaker. How, minister? I have heard what you said before. I would like you to tell us how you are going to do that.

MR SMYTH: Mr Speaker, it is quite clear that we will do it by way of the maintenance budget we have, which continues to grow. We will do it by getting rid of stock that is too old, unnecessary or inadequate for our needs and the needs of our tenants and making sure that we have appropriate stock of appropriate age in appropriate locations to meet the needs of our tenants, because we care for our tenants. We want to continue to build up public housing in the city so that it meets the needs of the tenants where they are.

Internet Gambling

MS TUCKER: My question is to Mr Humphries. Given that the functions of the ACT Gambling and Racing Commission include reviewing legislation and policies related to gaming and racing and making recommendations to the minister on those matters and that section 7 of the relevant act states that the commission must perform its functions in the way that best promotes the public interest and in particular, as far as practicable, promotes consumer protection and so on, did you seek advice from the ACT Gambling and Racing Commission to inform your position on the Commonwealth's call for a moratorium on Internet gambling licences?

MR HUMPHRIES: Yes, Mr Speaker, I have had a number of discussions with the chairman and the chief executive of the Gambling and Racing Commission about the proposals from the Commonwealth to ban Internet gambling. In fact, Mr Broome and Mr Curtis attended the inaugural meeting of the Ministerial Council on Gambling with me last month to assess the Commonwealth's position and help me provide a response to that. I have to say that the advice I have received from the chairman and the chief executive very much reflects the concern about the impracticality of Australian governments limiting access to a medium which is now all pervasive and extremely accessible to Australians; indeed, people all round the world.

Members may recall seeing Mr Broome on television only in the last 24 hours talking in his role as former chair of the National Crime Authority about problems with Australia's regulation generally of Internet business and the pitfalls we face in trying to regulate that emerging sector of the economy. The advice to me has been quite consistent. We have all seen the analogies about nailing jelly to a wall and things like that. That is what we are talking about when we consider the question of regulating the Internet and the concerns that have been expressed to me are very much ones about the practical difficulties of doing what the Commonwealth is attempting to do.

Mr Speaker, the position of the commission is one of giving the government advice on such matters. I will accept that advice. I think that the advice, particularly from our chairman, is extremely competent. He has a great deal of experience in that area and I think that it is important for us to continue to be part of a very important emerging debate. I understand that there is still a view by the Commonwealth that it should move down this path. It may be that they will, in fact, move to legislate in the federal parliament to achieve this goal. I am not sure what the Australian Democrats would do

when that legislation came to the Senate. I do not think anyone would have a clear idea of what the Democrats would do, based on what they have said in the last couple of weeks in the media.

Our position is unambiguous about that, Mr Speaker. It is very difficult to prevent access to the Internet. We have taken that position when it comes to offensive images. We take the same position when it comes to access to gambling. It is simply too difficult to conceive of a practical way of preventing people, particularly Australians, from obtaining access to support a moratorium of the kind which has been talked about by the Commonwealth.

MS TUCKER: I have a supplementary question, Mr Speaker. I do recall from the act for the gambling commission that they are required to keep minutes. For the information of the Assembly, could you please table by close of business today the minutes of the proceedings of the commission when it made the decision to take that position? I would really like to see the clear argument that the commission is actually putting to support that position. You have given a summary of it, but could you please do that for the Assembly because the act allows for that?

MR HUMPHRIES: I think Ms Tucker did not listen fully to what I had to say in my answer to the question. I said that my advice came from the chairman of the commission and from the chief executive of the commission. Neither of those people has met with me in the presence of the rest of the members of the commission and there are no requirements for meetings between the chief executive, the chairman and me to be minuted, nor should there be.

Ms Tucker: No, the minutes of the meeting of the commission. You gave us the impression that this was the position of the commission, but you are now saying that it was not.

MR HUMPHRIES: Mr Speaker, I repeat what I said in my original answer to Ms Tucker's question. I have not met with the commission. I have met with the chairman of the commission.

Ms Tucker: But doesn't the chair represent the commission?

MR HUMPHRIES: I do not know what discussions the commission—

Ms Tucker: You should.

MR HUMPHRIES: I am sorry to disturb Ms Tucker with my answer. I can simply say that I have not met with the commission as a whole. I met with the chairman and the chief executive. I have asked them for advice. They have given me advice. That advice was given in a meeting I had in my office sitting down with my advisers and with them. It is therefore a matter which was not minuted. I do not take minutes of meetings I have in my office as a rule. Perhaps you do, Ms Tucker, but I certainly do not. Mr Speaker, if the commission has discussed the matter, there would be minutes of that. I am happy to approach the commission about producing minutes of meetings they have had about this subject.

Your supplementary question presumably was about the first part of the question and the first part of the question was about advice to me. The commission as a whole has not been involved in advice to me. I drew a link between those two matters, Mr Speaker. If Ms Tucker wants me to get advice from the commission, then I am happy to approach the commission and ask them to give me minutes of any meetings they have had which have touched on this subject and, if they have no objection to that, to table them in the Assembly. I am not sure whether it is a good idea to be tabling in the Assembly minutes of meetings of statutory corporations; but, if that is what Ms Tucker wants, I am happy to consider at least doing that.

Gungahlin Drive Extension

MR CORBELL: My question is to the Minister for Urban Services. Minister, have you or has any member of your staff contacted the president of the Gungahlin Community Council following his appearance before the Legislative Assembly standing committee inquiry into the John Dedman Parkway on 5 May, last Friday?

MR SMYTH: Mr Speaker, my senior adviser had contact with Mr Gower on Friday. In fact, I have spoken with him—I think on Monday morning.

MR CORBELL: Mr Speaker, I have a supplementary question. Minister, did you or your senior adviser seek to have the president of the community council issue a statement in relation to his evidence to the urban services committee last Friday?

MR SMYTH: Mr Speaker, I am happy to read the Gungahlin Community Council's statement Into the record of this place because it is very important.

Mr Corbell: I take a point of order, Mr Speaker. I asked the minister if he sought the president to make this statement.

Ms Carnell: The minister can answer the question.

Mr Humphries: He has heard your question and he wants to answer it.

MR SPEAKER: Just a moment, please.

MR SMYTH: Mr Speaker, I was in Melbourne on Friday and returned to find all sorts of allegations being floated about myself in the press, raised by Mr Corbell and Ms Tucker. The important thing is that the Gungahlin Community Council felt outraged at what was done and the way that their words were twisted and they have issued a statement.

Mr Berry: Mr Speaker, I take a point of order. That was not the supplementary question asked. The minister should answer it or sit down.

MR SPEAKER: Just a moment, please, Mr Berry. I am just taking advice from the Clerk.

Mr Humphries: Mr Smyth was asked about a statement, Mr Speaker.

Mr Berry: No.

Mr Humphries: Yes, he was. Mr Corbell asked about a statement that was issued by the Gungahlin Community Council. Mr Smyth is quoting from the statement. That is an entirely appropriate way to answer this question.

Mr Corbell: Speaking to the point of order, Mr Speaker: my question quite clearly was: Did the minister seek to have the president of the community council issue the statement he is referring to? That was the question, Mr Speaker. It was a very simple question. If the minister is not prepared to answer it, he is obviously avoiding it.

MR SPEAKER: I think the minister probably has answered it inasmuch as he said that he was in Melbourne on Friday. You must have a loud voice, Mr Smyth.

Mr Moore: Mr Speaker, there is an important principle involved here in how we answer questions. On quite a number of occasions you have ruled that ministers have some freedom in the way they answer questions. If we are restricted to the exact way a question is asked, then there will be the "Have you stopped beating your wife—answer yes or no" style of question. That is an extreme example; but exactly the same applies when a minister is asked a question that, as can often happen, carries implications in other ways. It is important that a minister be able to answer the question fully and that is what Mr Smyth is in the process of doing here.

Mr Berry: I rise to speak to the point of order, Mr Speaker. Mr Moore obviously made his plea to you without reference to the standing orders. Mr Speaker, we are, as Mr Moore might recall, bound by the standing orders on this matter and they say that the answer to a question without notice shall be concise and confined to the subject matter of the question. The subject matter of the question was whether Mr Smyth or his senior adviser pressured the president of the Gungahlin Community Council into making a statement. Mr Speaker, if he cannot answer the question, you should sit him down.

MR SPEAKER: Have you all finished? Under standing order 118(a), as Mr Berry quoted, the answer to a question shall be concise and confined to the subject matter of the question. We have been through all this on a number of occasions previously. I certainly will not rule that "concise" means yes or no.

Mr Berry: I do not expect that.

Mr Corbell: As long as he can gives us an answer to the question.

MR SPEAKER: The implication of this is that you are expecting the minister to answer in a specific way. I cannot direct the minister to do that, either. Within standing orders, answers shall be concise and confined to the subject matter of the question. Mr Smyth has not yet breached standing order 118(a). He is certainly confining the answer to the subject matter of the question. As for being concise, I have not really heard him fully.

MR SMYTH: Mr Speaker, the Gungahlin Community Council, of their own accord, issued a press release. I think it is worthy to read it because it goes straight to the matter of their submission. It is headed "Gungahlin Community Council does not support calls for Smyth to resign." It goes on to say:

> The Minister for Urban Services, Mr Brendan Smyth, did not give the Gungahlin Community Council an ultimatum on the route for Gungahlin Drive Extension or no road as expressed by Mr Corbell.
>
> The Gungahlin Community is now witnessing the continued hijacking of an important debate on roads by politicians for their own political purposes.
>
> Mr Smyth was invited to a meeting of the Community Council to discuss roads and other issues relevant to his portfolio. At the meeting he responded to a number of questions from those present relating to the proposed extension of Gungahlin Drive. Mr Smyth being aware of some of the intense hostility directed, not only at the governments preferred option, but to construction of any Gungahlin Drive Extension, encouraged the Community Council to generate more support for their preferred road from Gungahlin.
>
> Because of the intense hostility from a number of community groups and Assembly members to the eastern alignment and in some cases the mere existence of any road, the Community Council felt compelled to enter the debate to avoid it being hijacked for narrow vested interests.

Mr Speaker, it goes on to say:

> Mr Stanhope, Leader of the Opposition, entered the Standing Committee on Planning and Urban Services late. Without having the courtesy to be present for the entire submission, he accused Mr Smyth of blackmailing the Gungahlin community. We refute this! Mr Stanhope has on two occasions publicly stated opposition to a Gungahlin Drive extension (John Dedman Parkway) (Maunsell Workshops and after his election to the Legislative Assembly). His only interest was political gain NOT public interest.
>
> Ms Tucker invited the editor of Gunsmoke to her office to ask why the Gungahlin Community Council was now fighting so hard to support the road. This could be construed as political interference of a similar kind to that which Ms Tucker and Mr Corbell are directing at Mr Smyth.
>
> The Community Council had hoped that due process would have been followed by members of the ACT Legislative Assembly to assess the most suitable route in view of the extensive studies already undertaken. This is still our hope, however, the campaign by conservation groups has caused us to be more assertive in order to ensure that a clear transport corridor is preserved for present and future needs.
>
> It was the combination of these pressures, which compelled the Community Council to enter the debate and choose a route to support.
>
> This is exactly the kind of political hijacking the Council, the residents and businesses of Gungahlin are heartily sick of. We call on all members of the ACT Legislative Assembly to stop wasting time and money and get on with building the road.

The final paragraph reads:

> The Community Council is asking elected members why Brendan Smyth seems to be the only politician who is concerned with the true interests of Gungahlin residents.

Mr Speaker, when the press releases of Mr Corbell and Ms Tucker hit the street, of course we spoke to the community and said, if necessary, they should clarify their position.

Members interjecting—

MR SPEAKER: Would you all like to settle down, please. I call Mr Hargreaves.

Diesel Fuel Rebate

MR HARGREAVES: Thank you, Mr Speaker. I do not mind sharing the floor of this place; it has been very entertaining. Mr Speaker, my question, through you, is to the Treasurer.

Mr Smyth: Oh!

MR HARGREAVES: I note the sigh of disappointment from the minister. Heavy vehicle operators in metropolitan ACT will be excluded from the diesel fuel rebate accompanying the introduction of the federal government's iniquitous GST, while their counterparts in other areas of the ACT, in regional New South Wales and even in Hobart will benefit from the rebate. A spokesman for the Chief Minister is quoted in today's *Canberra Times* as saying:

> We do have a reasonable relationship with the Federal Government and they know we're not afraid to stand up to them.

He was also quoted as saying:

> There is no reason why they wouldn't give us what we've asked for.

Given that, can the Treasurer say how he let this dual approach to the diesel fuel rebate happen and what the implications are for transport operators in metropolitan ACT?

MR HUMPHRIES: First of all, there was not any consultation with the ACT government by the federal government before it made its decision about the diesel fuel arrangements. Most certainly, if there had been the ACT government would have put very clearly its view that the ACT should be considered a regional or rural community in the context of this particular scheme. We would also have argued, as we argued subsequent to the announcement of the decision, that if that were not to be the case, then logically the ACT and its immediate environs should be considered a metropolitan area so that it is not tempting for particular businesses to relocate within the ACT/Queanbeyan region in order to get the benefit of a particular subsidy available from the federal government.

Mr Speaker, there is some inaccuracy in what Mr Hargreaves has had to say. It is not true to say that the whole of the ACT has been excluded or classified as a metropolitan area.

Mr Hargreaves: I did not say that.

MR HUMPHRIES: I thought that is what you said. You said that the ACT has been classified as a metropolitan area, I thought.

Mr Hargreaves: No, I did not.

MR HUMPHRIES: Okay. You said words to that effect, I think.

Mr Hargreaves: No, I did not.

MR HUMPHRIES: If that is the case, I am very pleased to hear that he has the facts right, Mr Speaker. The fact is that there are parts of the ACT which are not included in the metropolitan area for the purposes of the diesel fuel rebate.

Mr Stanhope: Which bits?

MR HUMPHRIES: Mitchell is one, Hume is another. I think Oaks Estate is another.

Ms Carnell: Hall.

MR HUMPHRIES: It could be Hall. Tharwa is one of those areas. I am not sure about Hall. It could be Hall as well. I will check if members are interested in that, Mr Speaker. Parts of the ACT are excluded. However, I certainly would not like to see businesses relocating within the ACT or, worse still perhaps, relocating from Canberra to Queanbeyan in order to take advantage of these diesel subsidies. That would clearly be a nonsense.

Our position has been quite clear. We think that the situation announced is not satisfactory. We have made representations to the federal government to that effect and we hope that there will be some modification of the federal government's position as a result of our representations on this subject.

MR SPEAKER: Mr Hargreaves, do you have a supplementary question?

MR HARGREAVES: I have, Mr Speaker. My supplementary question is: is the Treasurer's failure to protect Canberra business from the ravages of the GST linked in any way to the comment of his federal counterpart, Peter Costello, on last week's *Sunday* program when he said:

> Not one cent of the GST goes to Canberra. It goes to Premiers Carr and Bracks and Beattie.

What does it say about the real attitude of the federal government to the ACT Liberal government if it was not consulted over this issue?

MR HUMPHRIES: Mr Speaker, I think Mr Hargreaves is twisting the words. I did not hear the interview as I was not here, but I think he is twisting the words of the federal Treasurer. When referring to Canberra, I think he is referring to the federal government,

not to the ACT community. I did not hear the interview, but I am pretty sure that that would be what was being referred to there.

Mr Speaker, as Mr Hargreaves would have heard if he was listening to my earlier answer, we were not consulted about this issue before the decision was announced, so we have taken up the issue with the federal government and I hope that we will get a satisfactory outcome.

Fringe Benefits Tax—Nurses

MR BERRY: My question is to the Minister for Health and Community Care. Is the minister aware of concerns raised by the Australian Nursing Federation that changes to the federal fringe benefits tax law will result in a loss of net entitlements for nursing staff who were strongly urged to accept salary packaging as part of the most recent round of enterprise bargaining at Canberra and Calvary hospitals? Will the minister give the assurance sought by the ANF that additional federal funds extracted by the Democrats in return for their support for the fringe benefits tax changes will, in fact, be used to ensure that no nurse will suffer any loss of entitlements arising out of the changes to the FBT? I have asked two questions: are you aware of the concerns raised by the Nursing Federation and will you give us an assurance that they will not lose anything?

MR MOORE: I am aware that concerns have been raised about the fringe benefits tax. I have to say that the concerns will be much more likely to be concerns for medical officers than nurses because of the line that was drawn by the Democrats. These are issues. I have to say also that the nurses and the doctors entered into an enterprise bargaining agreement that made it very clear that changes to the fringe benefits tax would not deliver any extra financial benefit to the nurses that was not already within the agreement.

Mr Berry, I have to say that details of the compensation arrangement are not available to the ACT at this stage, so it is going to be difficult to predict how it will be used. You will remember that there is a transition stage of a $17,000 cap with the provision of grants to public hospitals through the states of $88 million in 2001, $80.5 million the following year and $72 million the year after that. That phases out to zero the year after that; in other words, in 2003-04. That is basically at the end of the current health care agreement.

To answer your question more specifically, yes, I am aware that there are concerns there. In terms of finances—the money that has been wrangled through the agreement with the Democrats—we will look at the most effective way of delivering them and try to ensure that we do not disadvantage any of our workers.

MR BERRY: I have a supplementary question. Will you ditch the fraudulent requirement of the current enterprise bargaining agreements that precludes the reopening of negotiations if pay rates and conditions are cut as a result of FBT changes? Was the government's anticipation of these changes the reason for insisting that the current enterprise agreement with staff at Canberra Hospital specifically exclude any FBT changes as a trigger for reopening pay talks? Do you expect the nurses just to cop it sweet now?

MR SPEAKER: Order! That is enough.

MR MOORE: I am flabbergasted that Mr Berry, who has negotiated many agreements, would have an attitude like that. It is an agreement that was negotiated and voted on by the vast majority of nurses and agreed to. That having been said, the government will always look at conditions—

Mr Berry: It was this pay rise or none.

MR SPEAKER: Order, Mr Berry! You have asked your question and your supplementary question.

MR MOORE: I can see the silly smile that Mr Berry is putting on there, but the reality is that an agreement is when two people actually agree on a position and it is signed off, voted on and agreed to. That having been said, of course the government will watch very carefully the issues associated with FBT.

Junction Youth Health Centre

MR RUGENDYKE: My question is also to the health minister. Minister, if the proposed injecting clinic were to be located in the QEII hospital site, as recommended by the relevant committee, what impact would that be likely to have on the Junction Youth Health Centre in that building? I did mention this matter briefly to Mr Moore earlier.

MR MOORE: I thank Mr Rugendyke for indicating briefly earlier that he would be asking me this question. The Junction Youth Health Centre is being run at the moment by a peak body which normally would not be a service provider. It was always the intention that that would be a temporary measure, that the service would then go through the normal process of calling for expressions of interest and being placed elsewhere. The junction will be moved from that site. It is entirely inappropriate for a youth health centre to be located with a supervised injecting room and we will look at locating it in a way that, hopefully, works much more closely with the services that Mr Stefaniak funds.

We are always looking to find ways to get a cooperative arrangement between different departments, particularly when we are funding similar sorts of things and there is overlap. Mr Smyth and I met only just recently on housing in this regard. Mr Stefaniak and I talk quite regularly about how we can get better cooperation in our services. I think that this provides us with an opportunity to provide a better youth service—one that provides the normal youth services and includes health as part of those services. Getting a coordinated service would be the best outcome, but we will look at it and see what we can do with it.

MR RUGENDYKE: As part of my supplementary question, I say to the minister that it has been reported in the media that the building is to be refurbished to accommodate a shooting gallery. If it is the case that it needs refurbishment, why was it not refurbished for a youth health centre?

MR MOORE: My recollection is that it was not refurbished for the junction when it was established there. I hope the refurbishment will be minimal. We certainly need to get a sterile environment for the supervised injecting room. It was always in the budget that there will be some minor capital works to be able to deal with the stainless steel facilities

of a safe injecting room. That will happen. Because we are actually encouraging addicts to move from East Row to the QEII site, the site of the Junction Youth Health Centre, there is probably going to be a need for some minor work associated with that as well. We are going through the process now of determining exactly what is needed, what is desirable and what would be fantastic but we probably cannot afford.

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

PERSONAL EXPLANATIONS

MS TUCKER: Pursuant to standing order 46, I seek leave to make a personal explanation.

MR SPEAKER: Leave is granted. Proceed.

MS TUCKER: Mr Smyth chose to read out in full the statement from Mr Gower, the president of the Gungahlin Community Council, which basically implied that I had tried to, I think, cause political interference in the committee process. I am not really quite sure what Mr Gower was saying, but I would like to explain that in fact I did invite the pastor from Gungahlin to speak to me because I was interested in understanding what her concerns were. There is no way it was political interference. It was actually an attempt to consult and understand the concerns of Ms Hopkins, I think her name is, who had expressed some fairly strong views on the issue and was supporting a letter that was circulated from Mr Gower calling on residents of Gungahlin to take a particular line, which is of course his right.

I was interested to understand why particular statements had been made. I would like to be quite clear that that was the intention of my inviting Ms Hopkins in to speak to me. She at no stage said she thought it was inappropriate. She was happy to come and speak with me. The meeting was amiable and I think I need to make that quite clear. I think it was a bit disappointing that Mr Smyth chose to read out the statement without actually asking me for my side of the story.

MR SPEAKER: Very well.

MR STANHOPE (Leader of the Opposition): Mr Speaker, I seek leave to make a personal explanation.

MR SPEAKER: Leave is granted. Proceed.

MR STANHOPE: On two issues, actually.

MR SPEAKER: Right.

MR STANHOPE: I echo the sentiments expressed by Ms Tucker in relation to Mr Gower's press release. Mr Gower felt the need, for reasons that escape me, to defame me in his press release as well. I am really impressed by the attitude which the Gungahlin Community Council have adopted in relation to their attempts to win friends and influence people!

Mr Humphries: That is it, attack community groups. That sounds good. Keep going.

MR STANHOPE: I will. I have read the transcript and I think Mr Gower will also need to read it. I think every member of this Assembly needs to read Mr Gower's evidence in the transcript and then compare it with his press release and draw a few conclusions. I do not know how a witness before an Assembly inquiry can give one version of events and then turn around immediately and provide another. This is a serious issue for the Assembly to address. I will not labour the point, other than to say that the comments attributed by Mr Gower to me are simply untrue and I regret that Mr Gower felt the need to make them.

I wish to raise another matter, Mr Speaker. I want to provide some assistance to you in relation to the question, and the implications raised in the question, that you have taken on notice. Mr Hird asked whether or not my chief of staff had access to my travel funds in travelling to Burnie for a Labor leaders conference.

Ms Carnell: Study funds.

MR STANHOPE: Study funds, that is right. He did not. In fact, I and the chief of my staff flew to Burnie as a guest of Mr John Howard, the Prime Minister of Australia, and Mr John Moore, the Minister for Defence. We actually went in a VIP aircraft in company with Kim Beazley. I thank John Howard and your federal Liberal colleagues and admire their generosity for allowing me to travel to Burnie on a VIP aircraft. I really am incredibly grateful that John Howard has some of the generosity of spirit and graciousness that is lacking in his colleagues across the Assembly.

Mr Humphries: Mr Speaker, I think this is going beyond a personal explanation.

MR STANHOPE: I did enjoy the trip to Burnie on the VIP aircraft.

MR SPEAKER: Order! There is a point of order here.

MR STANHOPE: We were provided with breakfast, and I would like to thank Mr Howard for the breakfast that he provided to my chief of staff and me.

MR SPEAKER: Order! Mr Stanhope, would you resume your seat.

Mr Humphries: I am glad that we found out Mr Stanhope's breakfast arrangements, Mr Speaker. But this is not a personal explanation any longer. It is a panegyric for Mr Howard perhaps, but it is not a personal explanation.

MR SPEAKER: We have flown by on that one. Please, Mr Stanhope, just come back.

MR STANHOPE: Most certainly. So that is how I got to Burnie for the Labor leaders conference. It was an important conference which was chaired by Mr Kim Beazley, the Leader of the Opposition. It was attended by every Labor leader in Australia, including four state premiers. And, of course, there was much comment about the fact that at this stage there are four state leaders and we were anticipating that within 16 to 20 months there probably will be eight or nine.

MR SPEAKER: You have been given leave to make a personal explanation. Now come on, back you get.

MR STANHOPE: I will get back to the point, Mr Speaker.

Mr Humphries: Mr Speaker, I want to take a point of order. Mr Stanhope is suggesting that there was some attack on the fact that there was a meeting of state Labor leaders. That is not the point that Mr Hird was making in his question, I believe. He was asking why it is that it was all right for Mr Stanhope to attend a Labor leaders meeting at public expense, at least in part, but when Mr Stefaniak's staffer made a similar trip in 1995 the Labor Party demanded that the money be repaid.

MR STANHOPE: I will go on with that point.

MR SPEAKER: I am in a difficult position here because I cannot really recall what happened in 1995.

MR STANHOPE: I might just conclude on a couple of points. First, I am incredibly grateful that John Howard has not asked me to repay any of the cost of the VIP; I am incredibly grateful that John Howard has not felt the need to do that. Secondly, I make the point that, yes, Mr Speaker, we did return to Canberra utilising funds provided by this place. I could have flown back on the VIP but I would have had to have come via Perth. The VIP was returning to Canberra but via Perth, because Mr Beazley had to go to Perth. So, yes, I did access my travel funds for my travel, Mr Speaker, pursuant—

Ms Carnell: Just as Mr Stefaniak's staffer did.

MR STANHOPE: No, let me finish—let me finish before you embarrass yourselves even further with this tawdry and appalling attack. I did access my travel funds, but through a letter prepared by my chief of staff in consultation with the Clerk of the Assembly, which was forwarded to the Speaker for approval. My chief of staff, consistent with a precedent established by you—and a very wise precedent established by you, Mr Speaker, if I may say so—travelled on training funds from the training account, which you approved, Mr Speaker, which was separate from my travel account.

Mr Speaker, I am pleased that you established this precedent. I am pleased that you had made a determination to separate and accept the need for staff to travel in company with their members from time to time.

Mr Humphries: So why couldn't Mr Stefaniak's staffer do the same thing?

MR STANHOPE: There is a reason for that. Let Mr Stefaniak fight his own fights. I am explaining my situation on the basis of a formal approval from your office, Mr Speaker.

MR SPEAKER: Thank you.

QUESTIONS WITHOUT NOTICE

Alcohol and Drug Program Client Records

MR MOORE: Mr Speaker, on 8 March Mr Rugendyke asked me a question about alleged missing alcohol and drug program client records and I thought it would be in the interests of him and Assembly members to hear where we have got to with that. At the time I said the alcohol and drug program had conducted audits; however we could not be sure about archived files.

I would now like to provide the Assembly with further information. The alcohol and drug program has audited archived files and there do not appear to be any records missing. The records that cannot be audited, however, are those archived files over 10 years old that the program culled to be destroyed. It is not possible to conduct an audit as the alcohol and drug program records simply show them as destroyed. There is no way of knowing whether the records were removed prior to being placed in the security or waste bin. So we do believe there are none missing, but there is that one possible gap.

ANSWERS TO QUESTIONS ON NOTICE

Closed-circuit Television Cameras—Public Places

MR HUMPHRIES: Mr Speaker, on 14 October last year the answer to question on notice No 187 asked of me by Mr Osborne appeared in *Hansard*. Part of that answer related to how and when camera systems are used, and in relation to ACTION I answered that cameras operate all day and, where the function is provided, the cameras record after hours.

Part of that answer may have been misleading to the Assembly, unintentionally. I am advised that the cameras operated by ACTION do operate all day and have the facility to record after hours but in fact do not actually do so after hours. The error was a result of misunderstanding on the part of ACTION of the question that was put to them. I apologise for that mistake and I have now corrected the record.

JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE
Report on Draft 2000-01 Budget

MR SPEAKER: Members, during the Assembly consideration of the motion to take note of report No 9 of the Standing Committee on Justice and Community Safety on 28 March, I undertook to consider comments made in the dissenting report of Mr Hargreaves and report to the Assembly on the matter. There are two issues that I propose to address. The first relates to publication of the report beyond the members of the Assembly.

As the Assembly did not authorise publication of the report and, having considered the contents of the dissent, advice was sort as to whether publication of the report and the dissent beyond members of the Assembly was potentially actionable. Absolute privilege applies to publication of the report to members but not to the wider publication of the

report unless the Assembly were to authorise it for publication. The advice received concluded that comments in the dissent to the report may be defamatory, though this was not certain, and there were significant doubts as to whether or not they were actionable and whether any legal action could be sustained.

In light of the advice received and in accordance with the provisions of Assembly standing order 212, I authorised provision of copies of the report to the departments involved in preparing the government's response to the reports and also to those persons who made submissions to the inquiry. I asked that particular advice as to the status of copies of the report be provided to recipients.

I do not propose to authorise wider publication of the report, although it is open to the Assembly itself to authorise publication of the report should it see fit. The privilege would then apply to the publication of the whole document.

The second matter that I wish to address is the request made by Mr Humphries during proceedings that I consider the content of the dissent. Mr Humphries expressed concern following Mr Hargreaves' withdrawal of remarks made in debate and his statement that he did not withdraw his comments from the dissenting report.

I do not believe that there is anything that I, as Speaker, can do on this issue. Practice in the Senate and the House of Representatives has been reviewed. Similar issues have arisen where, for example, senators have taken exception to the comments made in committee reports or dissenting reports concerning the actions of senators. These matters are regarded as matters for contention in debate and are treated accordingly. They are not regarded as questions of order for the chair to deal with.

MR BERRY: Mr Speaker, I seek leave to move a motion authorising publication of the Standing Committee on Justice and Community Safety report No 9 relating to the draft budget for the Department of Justice and Community Safety and related agencies.

Leave granted.

MR BERRY: Thank you, Mr Speaker. I move:

> That the Assembly authorises the publication of the Standing Committee on Justice and Community Safety's Report No. 9 entitled Draft 2000-01 Budget.

Mr Speaker, I was somewhat troubled by the hiccup, if I can describe it as that, which prevented the broad distribution of this important report. I am surprised that the government, because of its much-vaunted commitment to openness, did not beat me to the jump here and ensure that this report gained a wide circulation. I would hate to see this report lost in the hurly-burly of debate in this place.

Mr Speaker, my understanding is that there were some concerns about a couple of comments in this report and I note that you have said that there was some suggestion that they might have been defamatory, that you had taken legal advice and that was by no means certain.

MR SPEAKER: Correct.

MR BERRY: Mr Speaker, I have had a look at Mr Hargreaves' report and I will refer to the only matters that I can see in the report that relate to this matter. Mr Hargreaves says in his report:

> I suspect that these reductions reflect the personal commitment of the Attorney General and certain members of the Standing Committee to de-fund those activities because the activities have publicly disagreed with those Members' views on sensitive subjects. It is part of the "Do as you are told or we will de-fund you" method of government so obvious in recent times.

This occurs quite often, as we all know, but it is unusual that this practice has the blessing of a Standing Committee. An approach I reject.

That was in relation to a funding application by, I think, the Women's Legal Service, and we all know about that issue.

Mr Speaker, a further comment which the government may well have found sensitive relates to the reduction of funding for legal aid services. The report states:

> The reductions of funding for legal aid services with no indication on how those services would be replaced is appalling and should be reversed. The budget process should not be a vehicle for individual Members to pursue individual vendettas.

If that is all that is holding up this report, which is quite thick, then I think we are duty bound to ensure that we follow the usual course of publication. That is why I have moved the motion which is before the chamber and I urge members to support it.

I think members will recall that I had given notice of a motion in relation to a certain committee report and actions by a member of the government. I subsequently withdrew that motion, which I had submitted in the heat of the moment. I would certainly not like this place to assume a role to prevent these sorts of reports being circulated in the normal manner. For it to lay on the table is a convention which, in my view, restricts access to the information which flows from the committee process in this place. I would urge members in this place to support the motion and I would be quite surprised if the government does not.

MR OSBORNE (3.49): Just briefly, Mr Speaker: I am disappointment with this aspect of the report. I have stood up in this place many times and criticised government members for handing down dissenting reports which contain material never raised within the hearings of that committee. The allegations raised by Mr Hargreaves, apart from being not true, were not raised by him once within the committee. In fact, Mr Humphries was queried about his reasoning behind the decision that was made, and he made it quite clear that he had acted on advice from his department.

Mr Berry said that he has made decisions in the heat of the moment and I think this is the case in relation to Mr Hargreaves' allegation in this report. Not once did he ask me if my decision behind supporting the government on this was based on what he claimed in the report, and that is what I was disappointed about, Mr Speaker. He never raised it with me and it was not raised within the committee.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (3.51): I move:

> That the debate be adjourned.

Mr Berry: What, gone to water?

MR HUMPHRIES: To consider the advice the Speaker has given.

Question put:

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

The Assembly voted -

Ayes, 10	Noes, 5
Ms Carnell	Mr Berry
Mr Cornwell	Mr Corbell
Mr Humphries	Mr Hargreaves
Mr Kaine	Mr Quinlan
Mr Moore	Mr Stanhope
Mr Osborne	
Mr Rugendyke	
Mr Smyth	
Mr Stefaniak	
Ms Tucker	

Question so resolved in the affirmative.

PRESENTATION OF PAPERS

The following papers were presented by **Mr Speaker**:

> Legislative Assembly (Broadcasting of Proceedings) Act –
> Pursuant to section 8 – Authority to broadcast proceedings concerning:
> The public hearings of the Standing Committee on Planning and Urban Services for its inquiry into Gungahlin Drive given to The 'Save the Ridge' group, dated 31 March 2000.
> The public hearing of the Standing Committee on Education, Community Services and Recreation on Thursday 13 and Thursday 20 April 2000 for its inquiry into adolescents and young people at risk of not achieving satisfactory education and training outcomes, dated 5 April 2000.

The public hearings of the Standing Committee on Planning and Urban Services for its inquiries into:

Gungahlin Drive Extension.

Draft management plans for urban parks and sportsgrounds in inner Canberra and Tuggeranong.

Draft variation No. 145 of the Territory Plan: Heritage Places Register.

Draft management plan for the lower Molonglo River Corridor.

Utilities Bill 2000.

Draft variation No. 139 of the Territory Plan: Additional uses in B11 area of North Canberra, dated 7 April 2000.

The public hearing of the Standing Committee on Planning and Urban Services on Friday 7 April 2000 for its inquiry into Gungahlin Drive, dated 7 April 2000.

The public hearing of the Standing Committee on Education, Community Services and Recreation on Thursday 4 May 2000 for its inquiry into adolescents and young people at risk of not achieving satisfactory education and training outcomes, dated 1 May 2000.

Pursuant to section 4 – A revocation and authorisations (2), dated 27 April 2000, given to specified government offices to receive sound broadcasts of Legislative Assembly and committee proceedings, subject to the certain conditions.

Financial Management Act, pursuant to section 25A – Legislative Assembly for the Australian Capital Territory Secretariat – Performance report for the March quarter 1999-2000.

PUBLIC SECTOR MANAGEMENT ACT—MANAGEMENT STANDARD NO 6 OF 2000
Papers and Ministerial Statement

MS CARNELL (Chief Minister): Mr Speaker, for the information of members and pursuant to the Public Sector Management Act 1994, I present Management Standard No 6 of 1999, which was notified in *Gazette* No 17, dated 27 April 2000. I seek leave to make a short statement.

Leave granted.

MS CARNELL: Mr Speaker, the scrutiny of bills committee in report No 3 of 2000 noted that three public sector management standards had been incompletely tabled in the Assembly on 29 February 2000. These standards were No 4 of 1999, No 5 of 1999 and No 6 of 1999. Standards Nos 4 and 5 of 1999 have been remade to ensure that they continue to have effect. The remade standards will be tabled as Standards Nos 4 and 5 of 2000. These standards were formally gazetted on 27 April 2000.

I advised the committee that Standard No 6 of 1999 did not need to be remade since it dealt with Y2K arrangements that had no continuing application. However, I agreed to also table this standard. I now table Standard No 6 of 1999 for the information of members.

PRESENTATION OF PAPERS

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

Subordinate legislation (including explanatory statements unless otherwise stated) and commencement provisions

ACTEW/AGL Partnership Facilitation Act 2000 – Notice of commencement (6 April 2000) of remaining provisions (No. 14, dated 6 April 2000).

Betting (ACTTAB Limited) Act – Amendment to ACTTAB rules of betting (excluding explanatory statement) – Instrument No. 114 of 2000 (No. 15, dated 13 April 2000).

Electoral Act – Appointment of Electoral Commissioner – Instrument No. 108 of 2000 (No. 13, dated 30 March 2000).

Environment Protection Act –

Environment Protection Regulations Amendment – Subordinate Law 2000 No 18 (S11, dated 31 March 2000).

Determination of fees – Instrument No. 107 of 2000 (No. 13, dated 30 March 2000).

Epidemiological Studies (Confidentiality) Act - Epidemiological Studies (Confidentiality) Regulations Amendment – Subordinate Law 2000 No 19 (No. 17, dated 27 April 2000).

Health Professions Boards (Procedures) Act and Pharmacy Act – Appointment of member of the Pharmacy Board of the ACT – Instrument No. 110 of 2000 (No. 15, dated 13 April 2000).

National Exhibition Centre Trust Act – Appointment of member of the National Exhibition Centre Trust – Instrument No. 112 of 2000 (No. 15, dated 13 April 2000).

Pharmacy Act. *See* "Health Professions Boards (Procedures) Act and Pharmacy Act".

Public Place Names Act –

Determination of street nomenclatures in the Division of Ngunnawal – Instrument No. 109 of 2000 (No. 14, dated 6 April 2000).

Determination of street nomenclatures in the Division of Greenway – Instrument No. 117 of 2000 (No. 17, dated 27 April 2000).

Public Sector Management Act – Management Standards –

No. 1 of 2000 (No. 13, dated 30 March 2000).

No. 4 of 2000 (No. 13, dated 30 March 2000).

No. 5 of 2000 (No. 17, dated 27 April 2000). (This amendment was incompletely tabled as Standard 4/1999 on 29 February 2000 and ceased to have effect on 2 March 2000 pursuant to subsection 6 (6) of the *Subordinate Laws Act 1989*).

Corrigendum

Public Sector Management Act – Management Standards 4, 5 and 6 of 1999 (No. 17, dated 27 April 2000)

Radiation Act – Appointment of member of the Radiation Council – Instrument No. 111 of 2000 (No. 15, dated 13 April 2000).

Road Transport (General) Act –

Determination of taxi fares – Instrument No. 115 of 2000 (No. 16, dated 20 April 2000).

Road Transport (Offences) Regulations 2000 – Declaration of declared holiday period (first moment of Thursday 20 April 2000 to the last

moment of Tuesday 25 April 2000 (inclusive)) – Instrument No. 113 of 2000 (No. 15, dated 13 April 2000).

Stadiums Authority Act 2000 – Notice of commencement (13 April 2000) of remaining provisions (No. 15, dated 13 April 2000).

Tenancy Tribunal Act – Variation to the Commercial and Retail Leases Code of Practice – Instrument No. 118 of 2000 (No. 17, dated 27 April 2000).

Water Resources Act – Determination of fees – Instrument No. 116 of 2000 (No. 17, dated 27 April 2000).

Performance reports

Financial Management Act, pursuant to section 25A—Quarterly departmental performance reports for the March 1999-2000 quarter for the:

Chief Minister's Department.

Department of Treasury and Infrastructure.

ACT Department of Justice and Community Safety.

Urban Services.

Education and Community Services.

Department of Health and Community Care.

Miscellaneous paper

Financial Management Act, pursuant to section 26–Consolidated Financial Management Report for the month and financial year to date ending 31 March 2000.

The quarterly reports, with the exception of that of the Department of Justice and Community Safety, and the consolidated financial management report were circulated to members when the Assembly was not sitting.

JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE
Report on Establishment of an ACT Prison
Report on Proposed ACT Prison Facility
Government Responses

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (3.58): Mr Temporary Deputy Speaker, for the information of members I present the government's response to the Standing Committee on Justice and Community Safety's reports Nos 3 and 4, entitled *Inquiry into the establishment of an ACT prison: justification and siting* and *The proposed ACT prison facility: philosophy and principles*. The reports were presented to the Assembly on 1 July 1999 and 21 October 1999 respectively. I move:

That the Assembly takes note of the papers.

Mr Temporary Deputy Speaker, the first report before the Assembly was on justification and siting. The second report was on philosophy and principles. In tabling the government responses to these reports I wish to record my appreciation of the work undertaken by the committee. The reports are thorough and comprehensive. They result from consideration of a wide range of submissions to the committee from interested organisations and individuals. I believe the reports, and the government responses, demonstrate a very high degree of consensus on the need for, and justification of, an ACT prison. The government agrees with the overwhelming majority of the

recommendations of the committee, in particular a philosophy of reintegration and rehabilitation. Equally, the importance of transitional release programs must be emphasised.

Numerous reports have recognised the significant problems associated with the current practice of sending ACT prisoners to New South Wales correctional facilities. The inadequacies of the Belconnen Remand Centre are well documented. Recently, numbers in the Belconnen Remand Centre increased to 70, setting a dangerous and unfortunate new precedent which clearly highlights the inadequacies of the ACT's current correctional system. This has added to the urgency of the ACT establishing a prison. I therefore welcomed the inquiry and subsequent reports by the Standing Committee on Justice and Community Safety.

The first report agrees that a prison is justified, and addressed the site issue. The second report is very detailed. It contains 46 recommendations dealing with the philosophy of the prison and its operation. The government recognises that there are, in some quarters, philosophical objections to the establishment of a private prison. The government agrees with the committee that these are not strong enough to exclude the concept of a private prison in the ACT. The government also agrees that there must exist strong safeguards and performance monitoring measures to ensure that the public interest is protected.

The government agrees that a competitive tender process should be undertaken. One of our first tasks will be to establish a benchmark that the private sector must meet if the ACT is to establish a private prison. If the private sector cannot meet the benchmark, the ACT will not go ahead with a private prison.

The government response also addresses the experience in other jurisdictions that the availability of prison space in any new facility can lead to an increase in custodial sentences. To counteract this possibility, effective alternatives to imprisonment must be provided and supported. Alternative sentencing options will be continually re-examined with a view to keeping imprisonment as a sanction of last resort. These options will include periodic detention, home detention and community-based alternative programs for drug offenders. The government recognises that imprisonment should be reserved for the most serious of offenders. The government supports the notion that diversion, wherever possible, should be pursued.

The government is committed to a high level of community consultation and participation in the process leading to the establishment of the prison. This will include consultation with, and regular reports to, the Standing Committee on Justice and Community Safety, as well, of course, as the community panel on the prison which the government is in the process of establishing.

In conclusion, I am pleased to present to the Assembly the government's responses to the two reports by the Standing Committee on Justice and Community Safety.

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

INDEPENDENT COMPETITION AND REGULATORY COMMISSION REPORT—ACTION'S BUS FARES FOR 2000-2001

MR SMYTH (Minister for Urban Services) (4.02): Mr Temporary Deputy Speaker, for the information of members I present the Independent Competition and Regulatory Commission's price direction report on ACTION bus fares for the year 2000-2001. I move:

> That the Assembly takes note of the paper.

Mr Temporary Deputy Speaker, I have presented the report of the Independent Competition and Regulatory Commission, formerly the Independent Pricing and Regulatory Commission, *ACTION Bus Fares for 2000-2001—Final Price Direction*, pursuant to the Independent Pricing and Regulatory Commission Act of 1997. This report is the second review of ACTION bus fares by the commission and I thank the senior commissioner, Mr Paul Baxter, and his staff for the report.

The government referred ACTION bus fares to the commission to meet the price oversight requirements of the national competition policy and to ensure transparency of public transport pricing. The terms of reference for the investigation of fares was gazetted on 1 September 1999.

I welcome the commissioner's direction on ACTION as a realistic assessment of where we are now and future directions. In summary, the commission directed that:

- average fare price increases for ACTION in 2000-2001 be in line with CPI movements over the last two years. This allows for an average fare increase of 3.6 per cent;

- attention should be given to reducing the discounts currently available on periodic tickets while maintaining concession tickets at 50 per cent of full adult equivalent and student tickets at 35 per cent of adult fares;

- impact of the goods and services tax be set at 8 per cent, reflecting underlying cost savings which ACCC guidelines state should flow through to bus users.

The commission also noted that:

- granting the fare increase will provide a higher proportion of cost recovery from fares, while mindful of the need for ACTION to continue to achieve cost efficiencies in the operation of bus services;

- the identification of best practice "commercial price" would require fares to rise by at least 82 per cent, which it agreed is not practical; and

- further debate should be undertaken on the level of public financial support for a bus service in Canberra and the balance between the potential for further cost savings by ACTION and the funding of its operations by bus users themselves.

Mr Temporary Deputy Speaker, this government is committed to providing effective, efficient and accessible public transport for Canberrans. In recognition of the important role of public transport in the community, the government contributes significant funds to maintain ACTION's current level of service, particularly non-commercial services and fare concessions. The draft budget tabled in the Assembly provided $4 million in additional funding for ACTION this year. The budget to be tabled later this month also makes provision for increased funding for ACTION.

The commission's inquiry and report help to ensure that the government is accountable and the processes it uses to support and regulate ACTION services are transparent. This accountability comes, in part, from the very nature of the commission's inquiry process, with its important element of broad community consultation into ACTION's services and its subsequent analysis of information.

The commission's consultation and review period of several months ensured that a large cross-section of the community could express their views about ACTION's services. The commission's processes involved several steps over the period of the investigation. The commission released the draft price direction in December 1999, took submissions, and then conducted a public hearing on 15 February 2000. The final price direction was released in March 2000.

The commission's directions and recommendations provide the government with an assessment of ACTION's current strategies and performance. The commission's recommendations are being examined and will be taken into consideration when formulating new fares. The new fare structure will be submitted to the commission for approval prior to the government releasing the revised fares. The new fare structure will commence on 1 July 2000.

Mr Temporary Deputy Speaker, I am also pleased to advise that a further survey will be undertaken to assess community satisfaction with ACTION's services. This will build on the base data provided in the 1999 survey. These surveys, an analysis of patronage data will assist the commission in its future determinations. The government welcomes the commissioner's price directions and looks forward to future determinations and associated recommendations concerning the costs and funding of ACTION's services.

I commend the commission's 2000-2001 price direction for ACTION bus fares to the Assembly.

Question resolved in the affirmative.

COMMISSIONER FOR THE ENVIRONMENT REPORT— PROGRESS TOWARDS NO WASTE BY 2010
Government Response

MR SMYTH (Minister for Urban Services) (4.07): Mr Temporary Deputy Speaker, for the information of members I present the government's response to the Commissioner for the Environment's review of the no waste by 2010 waste management strategy for the ACT, which was presented to the Assembly on 15 February 2000. I ask for leave to make a short statement in relation to this report.

Leave granted.

MR SMYTH: I am pleased to table the government's response to the ACT Commissioner for the Environment's review. Since the launch of the no waste by 2010 strategy in December 1996, the strategy has been backed by broad community support. After three years of waste minimisation programs, the strategy has made significant reductions in the amount of waste generated in the ACT and has a positive impact on resource recovery levels. Over this period, resource recovery has more than doubled.

Now, three years closer to the target, it is appropriate to reappraise the directions of the strategy. In 1999 the Commissioner for the Environment undertook a review of the effectiveness and efficiency of the actions and outcomes of the strategy, with particular emphasis on any impediments to its implementation.

In brief, the recommendations of the commissioner are:

- clarify and publicise the government's goals for the strategy;

- ensure the actions identified for the first two years are completed, in particular identification of full costs of each type of waste and comprehensive benchmarking;

- develop a strong focus on initiatives to engender community commitment to achieving the goal of no waste by 2010. This requires initiatives under "information programs and community support" and "public recognition";

- ensure that development of infrastructure for resource recovery estates and the National No Waste Education Centre is implemented and that the resource recovery estates are managed in such a way that they do not replace landfills as repositories of waste;

- use an appropriate central structure in government, or one that may cross agency or business unit boundaries, to prioritise actions for implementation of the strategy to 2010;

- use an appropriate central structure in government, or one that may cross agency or business unit boundaries, to identify and articulate the socio-economic and environmental consequences for the ACT of moving towards no waste to landfill by 2010;

- use an appropriate central structure in government, or one that may cross agency or business unit boundaries, to ensure adequate and appropriate resources are provided to implement the no waste strategy in accordance with the demands of the operating environment;

- initiate a whole of government approach to achievement of the no waste by 2010 strategy and implement best practice waste management in all government agencies and departments; and

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- there is an need to integrate efforts taken in the ACT with regional and national efforts.

Mr Temporary Deputy Speaker, over the last 12 months my department has further developed an action plan designed to reinvigorate elements of the strategy. These actions are consistent with the recommendations made in the Commissioner for the Environment's review and can broadly be described as follows:

- setting targets for the reduction of specific waste streams and identifying and assessing factors inhibiting the reuse and recycling of the priority waste streams;

- the augmentation of education and community programs to better inform, encourage and engender community commitment to achieving the goal of no waste;

- creating an example of best practice waste management within the government to initiate a whole of government approach to the strategy and to better articulate the social benefits of it to the wider community;

- set waste pricing at levels that provide incentives to reuse and recycle;

- consolidation of the infrastructure action plan and the development of emerging technologies associated with the collection, separation and treatment of waste;

- the development of markets for recycled materials to provide waste generators with alternatives to landfill disposal and to recover the true value of the resources;

- refine established waste and recycling collection systems and to conduct trials to improve the collection of resources;

- targeting building and demolition waste through the implementation of the development control code for best practice waste management in the ACT and the possible establishment of a mixed builders' waste recovery centre;

- participating in the national packaging covenant and assessing the requirements for waste management regulations;

- identifying the application of future waste management technologies in the ACT and the ongoing monitoring of emerging waste reduction techniques.

These steps are designed to provide an inspirational example to galvanise industry and community on the merits of no waste and to further guide the ACT towards becoming the first waste-free society in the world. The goal of the no waste by 2010 strategy is a waste-free society and an indicator of the success of the strategy will be no waste going to landfill by the year 2010. It is planned to clarify and publicise the strategy goal through the community education programs to support the further implementation of the strategy.

It is also recognised that education and community participation is critical to achieving no waste by 2010 strategy goals. Progress reports on the no waste by 2010 strategy will continue to be produced and issued annually to provide feedback to the community and to foster its continued support and participation.

The 1997 and 1999 reports were distributed to all Canberra households, while the 1998 report was available from shopfronts and libraries. In response to the 1998 progress report a suggestion was made by a Canberra resident regarding a community recycling day, and ACT Waste conducted a trial of the day. Trial results were positive and it is planned to develop the concept further.

ACT Waste engages specialist teachers and consultants to take education programs such as earthworks into the community. To maximise the effectiveness of the earthworks program it is being diversified. Open days have been and will continue to be regularly held to demonstrate composting, worm farming and associated activities. A business program is also being developed in order to target waste reduction and environmentally responsible practices in the commercial sector.

My department will continue to facilitate community consultation forums to promote greater participation in programs. Annual displays and promotions have been conducted at Floriade and to coincide with Recycling Week. It is planned to continue these types of promotional activities, targeted to specific wastes or messages. The schools program will be further developed and it is proposed to provide financial support to expand this program.

During 2000 my department will continue to progress the no waste infrastructure action plan. The resource recovery and transfer station at Mitchell will be progressed through a select tender process. It is also planned to conduct a feasibility study on the commercial viability of the Hume resource recovery estate during 2000.

A draft preliminary business plan has been developed for the No Waste Education Centre and it is proposed during this year to prepare a prospectus, seek funding from stakeholders and identify a potential operator with an established track record in environmental education. The No Waste Education Centre will provide an internationally recognised facility that will make available waste minimisation, recycling and resource recovery information to local, national and international organisations.

The establishment of a temporary resource recovery estate has been a response to new and inventive ideas proposed by small business enterprises from around the region. The cohabitation of businesses on the estate centralises and unifies recovery and value-adding industries. My department will establish an interdepartmental committee that will enable all government agencies to cooperate and assess programs such as eco-workplace, to help in reducing waste and enabling the ACT government to be leaders in waste minimisation.

It is planned to review the ACT government's purchasing policies to ensure that where price and performance are comparable, recycled products are given preference and that barriers to using recycled products are eliminated. Priority wastes identified by the ACT

Waste Inventory have been benchmarked and will be targeted over the next three years to 2002. My department is planning to conduct organic trials using a new combination of bins during 2000-2001 with a view to further reducing domestic waste disposal.

In addition, trials involving the commercial food processing industries are being planned for late this year. Collection of recyclables in public places, including shopping centres, will also be undertaken over the 12 months commencing July 2000.

The ACT government is signatory to the National Packaging Covenant for Used Packaging Materials, which has been developed to encourage a market-based approach to the recovery of packaging and to improve the stability of kerbside collection systems.

Options for legislation will need to be considered in the context of the enabling legislation needed for the National Environment Protection Measure for Used Packaging Materials. ACT Waste will engage consultants in 2000 to determine the actual cost of disposing the various categories of waste and will develop and implement a waste pricing strategy that reflects the actual cost of waste disposal and provides both incentives and resources for waste reduction.

My department is also participating in the establishment of the Australasian market development network to obtain access to technologies, which will assist with the identification and selection of suitable technologies for local application. ACT Waste will continue to undertake research and development targeted at specific waste materials. In addition, there are new technologies emerging that address waste management issues from cleaner production to waste-to-energy. My department will continue to monitor and investigate initiatives as they emerge.

The development of sustainable markets for recovered materials is imperative to the success of the no waste strategy. The ACT government's efforts in developing markets for recycled products are gaining momentum. ACT Waste has worked closely with the community and recovery industries to create opportunities for robust recycling markets.

In 1999 ACT Waste became a foundation administrator of the Australian Reusable Resource Network, an online trading site for reusable materials. The network currently covers Queensland, New South Wales and the ACT, with a view to taking the network Australia-wide. Participation in local and national "think tanks" such as the ACT Waste Management Forum and the Australian Market Development Network keep the ACT up to date on market developments and ensure regional and national consistency.

The development control code for best practice waste management in the ACT, launched on 1 November 1999, is expected to result in a considerable increase in the reuse of materials generated from demolition. The code requires developers to submit a waste management plan detailing how waste from demolition sites will be recycled. The code's effectiveness in reducing the quantities of demolition and construction materials going to landfill is currently being monitored by ACT Waste.

The initiatives detailed above are to be progressed between 2000 and 2002. A formal review of the progress will be conducted and new programs implemented for the periods 2003 through to 2006 and then 2007 through to 2010. The next step programs will be

reviewed in 2002 and again in 2006, and a series of new targets and priorities will be set to ensure that the ACT is on track to achieve the goal of no waste by 2010.

Mr Temporary Deputy Speaker, the ACT government looks forward to working closely with industry and the community in the continuing implementation of the no waste by 2010 strategy.

MR BERRY: Mr Temporary Deputy Speaker, I seek leave to move a motion.

Leave granted.

MR BERRY: I move:

> That the Assembly takes note of the paper.

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

LAND (PLANNING AND ENVIRONMENT) ACT—VARIATION (NO 113) TO THE TERRITORY PLAN—KINGSTON FORESHORE
Papers and Ministerial Statement

MR SMYTH (Minister for Urban Services): Mr Temporary Deputy Speaker, for the information of members I present, pursuant to section 29 of the Land (Planning and Environment) Act 1991, Variation No 113 to the Territory Plan relating to the Kingston foreshore. In accordance with the provisions of the act, this variation is presented with the background papers, a copy of the summaries and reports, and a copy of any direction or report required. I ask for leave to make a statement.

Leave granted.

MR SMYTH: Mr Temporary Deputy Speaker, Variation No 113 to the Territory Plan proposes to facilitate the redevelopment of the Kingston foreshore area within a planning structure that provides for the orderly transition to its ultimate use as a mixed use waterfront precinct with a strong arts, cultural, tourism and leisure theme.

The Interim Kingston Foreshore Development Authority, the agency established to facilitate the redevelopment of the foreshore, undertook an extensive program of community consultation and prepared a community brief which articulated the community values and aspirations for the site. This community brief was used to guide entrants in a national design competition to generate innovative concepts for the future development of the area and make recommendations on the implementation of the successful design. The winning design accommodates a range of environments for living, working, recreation and social interaction. Of the 37 hectares site, half will be retained as public domain. Public spaces include the foreshore parkland, waterfront promenade, the common and other smaller places.

The design concept provides a structure for future development of the Kingston foreshore in a manner that is unique to Canberra. It reflects the geometry of adjoining areas of the city, originally designed by Walter Burley Griffin, and balances this with the

needs of contemporary and future Canberra. Importantly, the scheme has the ability to let land uses and activities evolve over time within a planning framework that sets the character of the development.

The parcel of land is currently subject to specific provisions of both the Territory Plan and the National Capital Plan. The area subject to the National Capital Plan includes the existing boat harbour at Kingston and Wentworth Avenue from Hume Circle to Brisbane Avenue.

The National Capital Authority and the territory government agree that it is important in the planning arrangements for the redevelopment of the Kingston foreshore area that there should be only one planning body involved in managing and approving development in that area. As the area is owned by the territory, and the greater part of the area is already administered under the Territory Plan, it is considered that the redevelopment should be administered by the ACT government.

Accordingly, the existing arrangements at Kingston are proposed to be altered so that the extent of the designated area is restricted to the immediate edge of Lake Burley Griffin. The Commonwealth's interest in the future development of the area can be achieved through the expression of aesthetic principles in the National Capital Plan.

The Territory Plan is being varied concurrently with an amendment to the National Capital Plan, No 29. The existing land use under the Territory Plan for most of the site is municipal services. This reflects the previous use of the site for a range of public sector uses primarily related to transport, storage and distribution. The majority of such uses have now relocated from the site or are in the process of doing so.

It is proposed to vary the Territory Plan by amending the land use policy from municipal services and residential to entertainment, accommodation and leisure, with appropriate overlay provisions, and, subject to the approval of Draft Amendment 29 of the National Capital Plan, to include Wentworth Avenue within the major roads land use policy in lieu of a designated area within the National Capital Plan.

The entertainment, accommodation and leisure land use policy is used where a need exists to set aside land specifically for these uses. Most of these uses are already provided for within the commercial land use policies. However, the entertainment, accommodation and leisure land use policy contains additional controls, such as restrictions on the type and size of shops, to protect the established pattern of commercial centres.

The objectives of the entertainment, accommodation and leisure land use policy are consistent with the proposal for the Kingston foreshore to be redeveloped as a vibrant waterfront precinct which is attractive to residents and visitors alike. Additional objectives and policies will be introduced to give effect to the unique characteristics of and the aspirations for the Kingston foreshore.

The range of land uses proposed are aimed at complementing the existing metropolitan structure of Canberra and providing the diversity of experiences and opportunities sought by the community. A range of opportunities are provide in which to live, work, recreate and meet.

In addition, it is proposed to enter the Kingston power house historic precinct onto the heritage places register. The heritage places register is included at appendix V of the Territory Plan written statement. The creation of a power house historic precinct preserves and protects the heritage significant buildings and elements in a manner which encourages adaptive re-use, public access to, and experience and understanding of, the heritage significance of the place.

Mr Temporary Deputy Speaker, the entire development site is proposed to be defined land pursuant to section 7(3)(e) of the land act. This process enables the Territory Plan to be progressively updated as the detailed designs for the area unfold for each stage of development. Section 7(3)(e) states that where the Territory Plan identifies land as defined land it shall also set the principles and policies for its development. These principles and policies are set out in the Territory Plan variation.

The draft variation was released as a draft for public comment on 31 July 1999. Eleven written submissions were received. PALM considered the issues raised in the submissions and prepared a consultation report and final variation and submitted them to the ACT executive. Reports on consultation with the National Capital Authority, the Conservator of Flora and Fauna and the ACT Heritage Council were also submitted to the executive.

The Standing Committee on Planning and Urban Services considered the revised draft variation and, in report No 42 of March 2000, explicitly recommended that:

- No consideration be given to a high-rise tower or towers at Kingston foreshore;

- particularly sensitive attention be given to the interface between the Kingston foreshore development and the Causeway in order to minimise any loss of identical amenity by existing householders; and

- draft variation No 113 to the Territory Plan—Kingston Foreshore be endorsed, it being noted that it establishes a maximum building height of 20 metres or RL578 metres, whichever is the lesser, meaning that most of the site cannot exceed four storeys.

Following the committee hearing and report, the NCA also expressed concerns at the building height policy wording, indicating a need to strengthen the wording with particular regard to the urban design objectives. As a result of the clear recommendations of the committee, and the concern of the NCA, the building height policy has been reworded to strengthen the height limits on building development. This rewording was discussed with the NCA, which indicated agreement to the changed wording.

Mr Temporary Deputy Speaker, I now table variation No 113 to the Territory Plan for the Kingston foreshore.

PRESENTATION OF PAPERS

MR STEFANIAK (Minister for Education): For the information of members I present:

> University of Canberra Act, pursuant to section 36—University of Canberra—Report and financial statements, including the Auditor-General's report, for 1999.
> Annual Reports (Government Agencies) Act, pursuant to section 8—Canberra Institute of Technology—Report and financial statements, including the Auditor-General's Report, for 1999.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): Mr Minister, I understand you are going to ask for leave to do something?

MR STEFANIAK: No. I do not think there is any need to make a short statement. I think they are self-explanatory, so I merely table them for the information of members.

SUSPENSION OF STANDING AND TEMPORARY ORDERS

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.30): I move:

> That so much of the standing and temporary orders be suspended as would prevent a motion being moved to rescind the resolution of the Assembly of today, 9 May 2000 relating to the agreement to the Justice and Community Safety Legislation Amendment Bill (No. 3) of 1999, as amended, and to reconsider Schedule 1, as amended, of the Bill in detail stage forthwith.

Mr Speaker, I do not mean to speak to this motion for very long. There was an error in the running sheet for the bill this morning which omitted two government amendments which were on the table already. This simply facilitates the Assembly considering those two amendments.

Question resolved in the affirmative, with the concurrence of an absolute majority.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL (NO 3) 1999

Rescission and Reconsideration

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

> That:
>
> (1) the resolution of the Assembly of today 9 May 2000, relating to the amendment to the Justice and Community Safety Legislation Amendment Bill (No. 3) 1999, as amended, be rescinded;
>
> (2) Schedule 1 of the Bill, as amended, be reconsidered in the detail stage, pursuant to standing order 187; and
>
> (3) reconsideration of Schedule 1 of the Bill, as amended, in the detail stage commence forthwith.

Detail Stage

Schedule 1, as amended.

MR SPEAKER: The question now is that Schedule 1, as amended, be agreed to.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.32): I ask for leave to move amendments Nos 8 and 9 circulated in my name together.

Leave granted.

MR HUMPHRIES: Mr Speaker, I move:

> Page 16, line 17, proposed amendment of the *Tenancy Tribunal Act 1994*: Insert the following amendment:
> **"Subsection 27A (1)—**
> Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".
> Page 16, line 23, proposed amendment of the *Tenancy Tribunal Act 1994*: Insert the following amendment:
> **"Subsection 43A (1)—**
> Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".
> Page 16, line 17, proposed amendment of the *Tenancy Tribunal Act 1994*: Insert the following amendment:
> **"Subsection 27A (1)—**
> Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".
> Page 16, line 23, proposed amendment of the *Tenancy Tribunal Act 1994*: Insert the following amendment:
> **"Subsection 43A (1)—**
> Omit '85AE (1) or 85AQ (1) of the *Evidence Act 1971*', substitute '18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*'.".

I present the supplementary explanatory memorandum. These amendments, I think, are supported by the Labor Party, Mr Speaker.

Amendments agreed to.

Schedule 1, as amended, agreed to

Remainder of bill, by leave, taken as a whole and agreed to.

Bill, as amended, agreed to.

PLANNING AND URBAN SERVICES—STANDING COMMITTEE
Report on Draft Variation to the Territory Plan—
Heritage Places Register Additions

MR RUGENDYKE (4.34): Mr Speaker. I ask for leave to present report No 46 of the Standing Committee on Planning and Urban Services.

Leave granted.

MR RUGENDYKE: I present report No 46 of the Standing Committee on Planning and Urban Services entitled *Draft Variation to the Territory Plan No 110 relating to a proposal to add to the Heritage Places Register the following three places— Northbourne Oval, Braddon; Ainslie Public and Primary Schools, Braddon; and Ginninderra Village Precinct, Nicholls,* together with a copy of the extracts of the minutes of proceedings. This report was provided to the Speaker for circulation on Thursday, 4 May 2000, pursuant to the resolution of appointment. I move:

> That the report be noted.

I have pleasure in tabling this report by the Planning and Urban Services Committee. The report deals with three additions to the Heritage Places Register. Two of them were not controversial, Northbourne Oval and the Ginninderra Village Precinct, but the third, involving Ainslie Public School, generated some interest and attention.

The committee has recommended that the draft variation be endorsed but with one amendment to the section dealing with Ainslie School. We say that the conservation policy for the school should be amended to the effect that, "the site's conservation is best achieved through continued use of the site for educational purposes". Our reason for making this recommendation is that we think, as a committee, that it is appropriate to recognise the deep and on-going attachment of many in our community to the educational heritage of the site. Mr Speaker, in 1958 I was a student of that school. My only recollection of that time is of crying on the side of the road at the end of the school day and thinking that I had been deserted by my family, since dad was late picking me up.

Mr Speaker, I should add that I am tabling this report today as deputy chair of the committee. I do so because the chair, Mr Hird, wished to ensure that there was no possibility of any conflict of interest arising out of his unpaid position as director of a club near Northbourne Oval, one of the places affected by the draft variation. Therefore, Mr Hird took no part in the final deliberations on the nature of this report. I commend the report to the house.

Question resolved in the affirmative.

PLANNING AND URBAN SERVICES—STANDING COMMITTEE
Report on Draft Variation to the Territory Plan—Heritage Places Register

MR HIRD (4.37): Mr Speaker, I present Report No 47 of the Standing Committee on Planning and Urban Services entitled *Draft Variation to the Territory Plan No 145— Heritage Places Register*, together with a copy of the extracts of the minutes of proceedings. This report was provided to you, sir, for circulation on Thursday, 4 May 2000, pursuant to the resolution of appointment. I move:

> That the report be noted.

Mr Speaker, I wish to speak briefly to this report. Report No 47 of the Standing Committee on Planning and Urban Services sets out the committee's recommendation, which is unanimous, for the addition of several places to the Heritage Places Register. We make one change to the draft variation, which is that the word "maintenance" be included in the conservation policy for St John the Baptist Church, Reid. This will bring the conservation policy into line with that for the two other churches in the variation and hence ensure consistency. With that minor change, we are happy to see the draft variation proceed. We thank the minister and his staff. I also thank my colleagues. I recommend that the house agree to the motion.

Question resolved in the affirmative.

PLANNING AND URBAN SERVICES—STANDING COMMITTEE
Report on Urban Parks and Sportsgrounds in Inner Canberra and Tuggeranong

MR HIRD (4.38): Mr Speaker, I present Report No 48 of the Standing Committee on Planning and Urban Services entitled *Draft Plans of Management for Urban Parks and Sportsgrounds in Inner Canberra and in Tuggeranong,* together with a copy of the extracts of the minutes of proceedings. This report was provided to the Speaker for circulation on Thursday, 4 May 2000, pursuant to the resolution of appointment. I move:

> That the report be noted.

Mr Speaker, the 48th report by my Planning and Urban Services Committee deals with the draft plans of management for urban parks and sportsgrounds in inner Canberra and in Tuggeranong. There is only one matter to bring to the attention of members of the house, and that is that the committee's examination of the draft management plans led it to query the status of City Hill. Following our queries, government officials decided to upgrade the historic status of City Hill from low to high. We are happy with these changes and hence recommend that the draft management plan be endorsed. I commend the report to the house.

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

LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) BILL 1999

Debate resumed from 2 July 1999, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

MR CORBELL (4.40): Mr Speaker, the issue of who should receive the improved value of land in the leasehold system has been widely considered and debated both during as well as well before the period of ACT self-government. It is an issue which goes to the heart or the purpose of the leasehold system and the interests of the people of Canberra and the nation.

Mr Speaker, the bill presented by the minister today proposes to revert the level of change of use charge, or betterment tax as it is more commonly known, to a level of 50 per cent from the current level of 75 per cent. This proposal amounts to a complete abandonment of the leasehold system. It is a move which will only further undermine the leasehold system, and it will be a move towards a complete removal of the change of use charge in favour of so-called contribution schemes or, as they are known in New South Wales, section 94 payments.

This move fails to recognise the purpose of the change of use charge in ensuring that it is the lessor, that is the community, that receives proper payment for the sale of property rights held by them. Mr Speaker, this move does not take into account concerns that the across-the-board subsidy inherent in a discounted rate of CUC is untargeted, that it applies equally to low-quality and high-quality development, and that it has not been required by this government to be justified in the same level of detail as are subsidies or grant schemes provided by government in many other policy areas.

Mr Speaker, the government has failed to substantiate the claim that that change of use charge is a disincentive to investment in the development sector. The comments on this matter are completely anecdotal in nature and the evidence that has been presented to the Assembly's Standing Committee on Planning and Urban Services, as well as in the Nicholls report itself, could only indicate that CUC was part of a problem when it came to encouraging investment or development in the ACT.

The issue of certainty has also been raised as part of this debate. Whilst certainty is clearly an issue, the way to resolve that is not to simply propose a lower level of change of use charge or to replace it with another charge altogether.

I would now like to address briefly three important points in this debate. Firstly, one of the key purposes of the leasehold system is to ensure that the community receives the improved value of the land when a lease is varied. In levying the change of use charge, the government is ensuring that the owner of the land, the territory on behalf of the Commonwealth, receives a payment in exchange for the additional rights granted to the lessee.

Mr Speaker, as acknowledged by organisations such as the Property Council of Australia, and I quote:

> A lease does not confer property rights on the lessee. It is no more than a contract to use the property for an agreed time at an agreed price for an agreed purpose. The property right remains vested in the owner.

Mr Speaker, these are sentiments with which I completely agree and they come from the Property Council of Australia in a document they prepared on the consequences of automatic right of lease renewal for—surprise, surprise—retail tenants. So, Mr Speaker, what is good for the goose is good for the gander. We need to be consistent in how we treat leases, lessees and the rights they have, and how they acquire additional rights and how they pay for them.

Under a leasehold system, the territory seeks a payment of change of use charge for the use of extra property rights not already granted under the lease. If the territory did not levy such a charge and instead levied some form of development contribution, there would be no payment for the granting of these additional property rights. This would amount to abandonment of the leasehold system and the community's interest in the improved value of the land. Yet, Mr Speaker, the government's move today in proposing a reduction in the change of use charge to 50 per cent has been confirmed by the minister as simply the first step in moving towards a complete removal of CUC.

Mr Speaker, how important is the change of use charge? First of all, let us recognise that the ACT's most valuable fixed asset is its land; not ACTEW, not any other asset held by the territory, its land. Revenue from land, therefore, is an important stream of money for services in the ACT, and the change of use charge, whilst small compared to other land taxes and charges, is nevertheless a not insignificant amount. In the period from 1992-93 to 1997-98 the change of use charge raised $24.1 million in revenue. That is not an insignificant amount of money.

What we have to address in this debate is whether or not it is appropriate to reduce the level of CUC. The government again argues that the introduction of a development contribution is the ultimate end and resolution of this problem, but the application of a development contribution in place of a change of use charge has been acknowledged by people in the development industry as a more attractive charge as they can see that the payment that they are making is being spent in ways that contribute to the overall amenity of the area in which their development takes place. Mr Speaker, this view again highlights the problems with removing a change of use charge.

Instead of having a charge which provides the entire community with the return on the improved value of the land, only a particular geographical area will benefit. This is inequitable and it would result in a loss of general revenue available to the territory overall. Mr Speaker, the key purpose of the leasehold system is to ensure that the community receives the full return on the improved value of the land it leases. Removal of CUC or a continued reduction in the level of CUC would remove the ability of the territory, that is, the community, to achieve this.

The appropriateness of a 50 per cent charge, Mr Speaker, has been advocated by Professor Nicholls in his report. It has been advocated by a majority report of the Standing Committee on Planning and Urban Services. Neither of those reports,

Mr Speaker, took into account the nature of the untargeted subsidy CUC is at a discounted rate compared with the policy adopted by government in assistance to community and other organisations.

Mr Speaker, evidence was presented during the Planning and Urban Services Committee inquiry highlighting the fact that the application of a 75 per cent or 50 per cent change of use charge as a way of encouraging development, which is what its advocates argue, is not a transparent or well targeted process. The ACT Council of Social Service presented the view that, instead of a subsidy through a discounted change of use charge, if the territory took the view that it should be providing incentives for development it should do so in a targeted way through the provision of a direct subsidy or payment. ACTCOSS took the view that this would remove much of the ambiguity about the levels of revenue forgone, which is what we are talking about with change of use charge. It is revenue forgone if it is at a level of less than 100 per cent.

Evidence was also presented to the committee that the recommendations of Professor Nicholls for a 50 per cent change of use charge were not backed up by the substantive data needed to justify such a level of subsidy. The point was made that the application of such a large subsidy across the board without any substantive data similar to that which the government requires when considering other forms of assistance, is inappropriate and would certainly not be tolerated in any other policy area. A comment from the Director of the Council of Social Service was: "We tend to get sent out of the room if we have not got anything to back up our claims," and not just anecdotal claims. The government requires substantive analysis and proof that there is a need for a subsidy, that there is a need for assistance. This government does not accept claims for a subsidy or for assistance in any other policy area based on anecdotal evidence, and neither should it; but it does with this, and it is wrong.

Mr Speaker, another concern which the government has not addressed in its implementation of a 50 per cent change of use charge relates to the fact that when a change of use charge is calculated at a discounted rate of 75 per cent, or 50 per cent, it does not differentiate between the quality of development being proposed. Developments of a relatively low standard in terms of design and material receive the same level of subsidy as development of high design and building standards. As a matter of public policy, surely, a subsidy such as this, which is currently provided through a discounted rate of CUC, should have explicit aims and objectives. One of these should be to encourage high-quality, sustainable development in Canberra if the application of discounted CUC across the board does not address this issue. Members will have to forgive my cough.

Ms Tucker: You could seek to have your speech tabled. It is getting really painful.

MR CORBELL: No, it is all right. It is okay. Clearly, the only way to encourage high-quality development is either to require a 100 per cent change of use charge on all development proposals which involve a lease variation and then provide a subsidy to achieve those aims in terms of design and materials the government believes appropriate, or to allow remission of betterment only where specific criteria are met. Mr Speaker, the government's proposal does neither and it is seriously deficient in that respect.

The introduction of a 50 per cent change of use charge will not result in any improvement in the quality of urban redevelopment, nor will it provide for open transparent or accountable analysis of the level of subsidy provided by the territory to the development sector. The appropriateness of moving to a 50 per cent change of use charge has been poorly substantiated and is not backed by the clear, detailed and substantive analysis required of other requests for government assistance.

Mr Smyth: Simon, just wait 30 seconds. We are all happy to sit here and wait.

MR CORBELL: No, unfortunately, it will not go away.

Mr Smyth: I think we are all happy to sit here for 30 seconds. It will stun them all out there.

MR CORBELL: I thank the minister for his concern. I turn now to the change of use charge as a disincentive for development. The government argues for and justifies a reduction of change of use charge to 50 per cent by saying that the current level of CUC levelled at a higher level is a disincentive to development. There is no substantive evidence to justify this claim. During the planning committee's hearings on this inquiry evidence was presented in camera which sought to justify the claim that the change of use charge at 75 per cent or higher was a disincentive to investment. While this evidence did highlight the change of use charge as a possible factor influencing decisions relating to development, it was conceded during the inquiry and the evidence given that it was not CUC alone which resulted in development proposals not proceeding.

Mr Speaker, I seek leave to continue my comments at a later time.

Leave granted.

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Mr Hird: Do you want to incorporate your speech?

Mr Corbell: No.

MR MOORE (Minister for Health and Community Care) (4.55): I am delighted to follow my close colleague in this matter, Mr Corbell. I rise to lend my support not only for what Mr Corbell has said but also for the very succinct way in which he has put those arguments. I was particularly taken by his quote from the Property Council of Australia on the way they perceived how leases should be managed, who remains in control and who is entitled to the profit. It is an argument that I believe I put here on one or two occasions previously.

Mr Smyth asked me a little while ago whether I was going to speak on this matter without notes. I said I suppose the best way for me to respond to this matter is to do a search in *Hansard* from 1989 onwards. I imagine you will find a speech on this matter about every three months. Rather than bore members, I have nothing specific to add to those speeches in general terms.

I am disappointed that Mr Rugendyke is not here because I would like to have reminded him that when we talk about what Mr Corbell was talking about, the ownership of the land, we should remind people that the owner of the land in this case is the people of the ACT and it is entrusted to us in this Assembly.

Mr Speaker, I foreshadow that at the detail stage I shall move an amendment so that instead of having 50 per cent, as Mr Smyth has suggested, we will move it back to 100 per cent. I had intended to leave it, and I think Mr Corbell was in the same frame of mind, from discussion I had with him earlier, and to allow the sunset clause to take effect, which would have brought in the 100 per cent. However, since the government has pre-empted it, and the minister brought it on, it is entirely appropriate for us to change this to 100 per cent.

I suppose it is of great frustration to me, Mr Speaker, that the Liberal Party and this government still do not see the significance of this issue in terms of how the community as a whole is entitled to its rightful ownership of the land. It is a good business practice, as owner, to ensure appropriate leasing and to retain the value of the increase in the land when it is a matter of change of use. That is something that belongs with government. To me it is just so fundamental and so self-evident, and yet we still have the Liberal Party bringing this matter back to the Assembly, whether they are in opposition, as they did before Mr Smyth was here, or whether they are in government. The reality is that the full value of the land belongs to the people, and we ought to respect that.

MS TUCKER (4.58): I also welcome the opportunity to speak on this matter again. Like Mr Moore, the Greens have spoken very often in this place on issues of betterment and I join with Mr Moore in supporting what Mr Corbell has said.

The history of betterment in the ACT has been a succession of policy changes in how betterment should be calculated, reflecting an ongoing conflict between those who believe that the windfall financial gains that can arise to landowners whose land is re-zoned from one land use to another should be returned to the community versus those who believe that the speculative gains are a necessary encouragement and reward to developers.

The Stein report into the administration of the ACT leasehold system which was released at the end of 1995 brought this debate to a head. It recommended that the betterment or change of use charge be the same across Canberra and that a rate of 100 per cent without remissions should be phased in. The Stein report noted that a general remission system provides a subsidy for development to existing lessees irrespective of its merit, and also at the expense of new lessees in the ACT who cannot access such capital gains. It also promotes development in established areas at the expense of locations where unleased land is available, such as around town centres. In fact the government, in its response to Stein, agreed that the change of use charge should be 100 per cent but wanted to allow for remissions in particular cases where it was thought necessary to provide an incentive for redevelopment.

However, very soon afterwards, in the government's 1996-97 budget, the government announced that the change of use charge would be generally reduced from 100 to 75 per cent as a general encouragement to the building industry. It also commissioned a study

of betterment and change of use by Professor Nicholls, which recommended that the change of use charge be reduced even further to 50 per cent.

Not surprisingly, the government supported the 50 per cent rate and introduced the necessary legislation which is the subject of this debate now, but, fortunately, the Nicholls report was referred to the urban services committee for inquiry, and the change of use charge has stayed at 75 per cent, with a sunset clause of 30 September when it will go back to 100 per cent.

The committee split on the issue of the appropriate level of change of use charge, with Mr Corbell dissenting from the majority report. On examining the report I found Mr Corbell's dissenting report, which recommended that the change of use charge revert to 100 per cent, more compelling and consistent with our views than the majority report which just echoes the Nicholls report call for a 50 per cent change of use charge.

It has to be remembered that land is the key asset in the ACT. We are a small territory and we do not have mineral resources or significant agricultural resources. It is imperative that governments do not squander the value of this land. An original objective of the ACT's leasehold system was that increases in land value that accrue as the city develops should be returned to the community as a whole and not to individual leaseholders through speculative gain. The change of use charge does this by returning to the government that increase in land value on particular blocks where the lease purpose clause is changed from a lower to a higher value use.

It is quite clear to me that anything less than a 100 per cent change of use charge represents a subsidy to those developers who are able to secure a change of lease purpose. For example, if a developer bought a vacant block, say in Gungahlin, that was already identified for multi-unit development, they would have to pay the full market value for that block for that purpose. However, if a developer bought some adjacent blocks in, say, North Canberra, which currently have single dwellings on them; they would pay the market value for single houses in that area. However, if the developer then gets a change of lease purpose to allow multi-unit development on the amalgamated block, the value of the land would be increased, but he only paid the lower value to buy the blocks.

If the change of use charge is 100 per cent, then that increase in value is returned to the government and the community, and the developer would be on the same footing as the developer in Gungahlin. However, if the change of use charge is 50 per cent, the developer in North Canberra is getting a windfall gain on the land value relative to the Gungahlin developer.

The development lobby keeps pushing the line that this subsidy is necessary to facilitate redevelopment and that a 100 per cent change of use charge has discouraged particular development proposals in the past.

At 5 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: However, this claim is assuming the proportions of an urban myth. Professor Nicholls admitted that such claims were only anecdotal and he could not find any correlation between the level of the change of use charge and the level of building activity in the ACT. In fact, he found that it was difficult if not impossible to isolate the effects of the change of use charge on investment from other factors affecting investment in the ACT, such as the demand for office space and rates of population growth.

Mr Corbell also noted that the committee was presented with evidence about some development not proceeding because of the change of use charge, but that it was conceded that it was not the change of use charge alone that resulted in the development proposals not proceeding.

In fact, I would be very worried if government subsidies were artificially stimulating particular types of building development which do not match demand. From a planning perspective, development activity should be led by demand from building users and not by whether there is a subsidy available for the development. If the government wishes to promote particular types of development, such as its actions to promote the reuse of vacant office blocks in Civic, then it should do so in a direct and transparent manner that can be reviewed by the Assembly rather than just rely on the blunt mechanism of a reduced change of use charge on all lease purpose changes.

It has also been claimed that the various amendments to the change of use charge over the last decade have created uncertainty for the development sector, but it should be noted that this uncertainty has been brought on by the developers themselves by their own efforts to undermine the change of use charge.

I therefore do not see why the government should be giving away a revenue stream by reducing the change of use charge when there is an uncertain public benefit from this move, apart from the benefit to developers' profits and unverified impacts on development activity from the higher charge. I therefore will not be supporting this bill and want to allow the change of use charge to revert to 100 per cent as currently provided for in the land act, although I notice that Mr Moore has tabled an amendment seeking to omit 50 per cent and substitute 100 per cent. Right now, in this debate, I would support that first.

MR CORBELL (5.05): Thank you, Mr Speaker, and I thank members. I will soldier on. The government's proposal to move to a 50 per cent change of use charge does not address a range of important issues. One of those which I am particularly concerned about, and which the Labor Party is concerned about, is the change of use charge which relates to concessional leases. Currently the government allows CUC to be calculated as 75 per cent if the remaining period of the lease is paid out. Otherwise the calculation is 100 per cent.

It has become increasingly apparent in a range of draft variations presented to the Assembly that the process of permitting a 75 per cent payment has the potential to result in a windfall gain to the lessee at the expense of the territory. Mr Speaker, the government's proposal to move to a 50 per cent change of use charge does not address this issue. Instead of proceeding down this line, the government should be acting on the recommendations of the Stein report to ensure that a 100 per cent change of use charge is charged on all variations to concessional leases to prevent windfall gain.

Mr Speaker, I think the other speakers have addressed most of the issues I wanted to raise but I will just make two other points. First of all, the issue of certainty has been central to the government's arguments in shifting to 50 per cent change of use. There is no doubt that continued changes to the level and application of the CUC have created uncertainty in the development industry and this must be addressed. In saying this, however, it is worthwhile noting that much of this uncertainty has resulted from attempts to reduce the level of CUC charged. It has also resulted from attempts to try to remove the CUC altogether and even to replace the leasehold system in the ACT. That, I think, needs to be kept in mind when members consider the certainty issue in this debate.

It is clearly in the interests of the broader community, as well as the development industry, to know that a system of charging for CUC will remain reasonably constant and consistent. Clearly, the way to resolve that is to decide today that the most appropriate course of action is a 100 per cent change of use charge.

Mr Speaker, to conclude, the issue of certainty can be resolved through some very sensible recommendations which this place has failed to take up to date. One stems from the recommendations of the Stein inquiry into the administration of the ACT leasehold to provide for the establishment of a development rights register to provide prospective developers with information on the range of CUC that they could expect to be charged. Another, Mr Speaker, is to allow for development proponents to pay CUC over the life of a project. Currently CUC must be paid up front in full at the beginning. Allowing it to be paid in stages over the life of a project would help, I believe, to address any negative perception, and I stress the word "perception", of the impact of CUC on development while still ensuring that the community receives full value on the land.

Mr Speaker, it is a pity the government has not chosen to adopt these mechanisms and instead is reverting to what is a blunt tool, a 50 per cent change of use charge. Mr Speaker, I thank members for their patience and I indicate that the Labor Party will not be supporting this bill.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (5.10): Mr Speaker, obviously I support the bill and I support the movement of betterment to 50 per cent. The argument here, it seems to me, is about the extent of the appropriation by the community of increases in value in land or, if you like, windfalls that arise out of the ownership of property from the hands of the owner of the property into the hands of the community.

It seems to me that the principle that Mr Corbell has put forward is that where there is an increase in the value of the land because of a change in its use, that value properly belongs to the community, and the community therefore should receive the full value of that increase in the value of the land. In other words, it is an argument that says that profit which is based on some public subsidy or public subvention ought to be a profit which goes back to the community, not to the person in whose hands the profit has accrued.

Mr Speaker, I accept the superficial attractiveness of this proposition. Certainly, if you are a Socialist, it is very much in line with the view you take of the way in which the benefits of economic activity should be appropriated back to the state; but I would argue

that in contemporary Australia that principle is not the prevalent principle at work with respect to a great deal of the economic activity that takes place in our community. The reality is that there are many, many cases in our community of private profit, if you like, which derives directly from a public subsidy of some sort or another. There are many such cases.

One good example of that, Mr Speaker, is a decision just a few weeks ago in this place, a unanimous decision, to provide a subsidy of from $8 million to $10 million, depending on how you calculate it, to a private airline to establish a business in the ACT. Ultimately, that $8 million to $10 million will assist that airline to a profitable situation—to provide either increased profits or to make profits where otherwise they would not make profits. In other words, the community has subsidised a private organisation, a business, has put public money into a private business, to produce profits for that private business. Members in this place, without much hesitation, supported us doing that on that occasion, Mr Speaker.

Mr Berry: Do not speak for me. I expressed—

MR HUMPHRIES: Actually, I think you did, Mr Berry. I withdraw that. It was not a motion of support; it was a motion to note. The members expressed support in the debate for the concept of providing the subsidy. There are many other examples of where similar public subsidies in one form or another are provided.

I will give you another example. The government has engaged in the last few years in a major program to upgrade streetscapes, particularly in places like Manuka and Civic, and particularly the paving of those areas, to facilitate private businesses to be able to put outdoor cafe tables and chairs in more attractive settings. Again it is an example of public subsidy of private profit.

Put in those bald terms, it does not sound like a very attractive proposition, but the more you look at it the more you realise that our community, indeed, other communities all around Australia, in fact probably all around the world, do provide extensively for private organisations, namely businesses, to receive a measure of public subsidy to assist them to make profits.

Why do we do this? What is the purpose of that? The purpose, Mr Speaker, is to facilitate economic activity which is desirable, and desired by the community to occur, but which might not occur but for the subsidy. A total laissez faire view would say that governments should not be in the business of entering the marketplace; they should not be providing subsidies to players; they should not be picking winners; they should leave the market to do what it wants to do by itself. That is the absolutist view. But we have never been of that view in this country. We have always provided some measure of support to private enterprise in order to facilitate the creation of business opportunities and, in turn, jobs, and this is the crux of the debate. That is what the debate is about. It is about the generation of economic activity so as to create jobs and economic opportunities for our community.

So the question here is not whether the private benefits that accrue from a change of use should be retained by the private landowner in whose hands the benefit accrues, but whether or not that private benefit creates a degree of public benefit in turn to warrant the subsidy of that activity from the public purse.

This is another point of contention in this debate: To what extent does a low rate of betterment or change of use charge produce economic activity which would otherwise not occur? Mr Speaker, I have had many representations on that subject over the years.

Mr Berry: All anecdotal.

MR HUMPHRIES: All anecdotal. That is absolutely true, Mr Berry, because no-one can prove absolutely that a particular level of taxation at a particular rate produces or discourages economic activity. That is quite true. But governments of all persuasions have clearly believed over the years that some things can be taxed so heavily as to discourage their occurrence, to dissuade people from doing those things, and others have believed that the provision of public subsidies can be sufficiently significant to ensure that those things are encouraged to occur.

Does this characterise betterment in the ACT at this time? I do not know, Mr Speaker, from my own experience, but I am prepared to rely upon the clear evidence in a detailed study conducted by Professor Des Nicholls of the Australian National University. I am prepared to accept the view of the independent arbiter on the subject. I understand he is an economist.

Mr Corbell: He is a statistician.

MR HUMPHRIES: A statistician; I beg your pardon. He has said that his analysis suggests a level of economic activity generated by the level of public subsidy less than a 100 per cent change of use charge represents. That is the evidence we have in front of us. If that is to be supported, if that view is to be sustained, then clearly we need to consider reducing the level of betterment in this town to have a level of economic activity which we consider desirable.

Perhaps some members do not consider that we need to further push down the disincentives to job creation and employment growth because the levels of employment are quite satisfactory. Mr Speaker, I do not think any member of this place believes that even the relatively low levels of unemployment in the ACT at the present time are satisfactory. There are still several thousand people in this territory who do not have employment and, of course, economic conditions can change very quickly. It is incumbent upon us to continue to push downwards on unemployment and to bring it as near as we can to a level of zero unemployment. It may not be zero per cent, but it should certainly be as low as we can make it happen.

Mr Speaker, I think the evidence is clear that you reduce taxation levels on business and you produce a level of economic activity. What is more, I think members in this place believe, for the most part, that that is so. Why do I say that? I say that because of what occurred back in 1996 or 1997 when the Assembly agreed that betterment taxes should be lowered to 75 per cent from 100 per cent while the inquiry by Professor Nicholls was going on.

Why did the Assembly agree to reduce betterment at that time? If it believed there needed to be inquiry, fair enough. An inquiry could occur even while betterment stood at 100 per cent. Why did it need to reduce betterment levels? The reason, Mr Speaker, was very simple.

At the time, as planning minister, I was approached by building unions and businesses, construction firms in the ACT, jointly, with the view that by reducing betterment levels we would stimulate what at that stage was a quite sluggish ACT economy, and an economy, what is more, whose construction sector was in serious trouble. There was a real need to be stimulating economic activity to create employment in the construction industry.

You might argue that we do not need that stimulus right now, today. You might argue that, and that is probably not an unreasonable argument given that there are quite healthy levels of activity going on in the ACT across the board, as members have heard from my stats given in this place during question time today. Nonetheless, we have to accept that if we thought in 1997—I think it was 1997—that lowering the betterment tax was going to produce economic activity and create jobs, why do we not believe that will be the case today?

We might say we do not need the jobs; that we can put the jobs to one side. That is a reasonable argument. But we cannot say that lowering betterment does not produce more jobs because we believed that in 1997. That is why the Assembly agreed in 1997, with the support of the Australian Labor Party at the time, to lower betterment levels.

Mr Speaker, the Assembly did not agree to lower betterment levels in order to create some kind of test tube for Professor Nicholls to be able to better analyse what happens when you lower betterment levels. That is not why we agreed to do that. We agreed to lower betterment levels in 1997 because we believed that that would produce jobs. Mr Speaker, if we accepted it then, we need to accept it now, because the argument is no different. The argument is absolutely the same. If economic activity is affected by taxation levels and you desire to produce a degree of activity in a particular area of the economy by reducing taxation on that level of the economy, then it makes sense to reduce taxation in this level if we want to create jobs in construction.

If members opposite want to say we do not need those jobs in construction at the moment, that is fine; let them say that. But I predict, Mr Speaker, that at some point in the future if the ACT economy looses its buoyancy, if we find—

Mr Berry: It doesn't make any difference. It just puts dollars in some people's pockets.

MR HUMPHRIES: Mr Speaker, I heard the other speakers on that side in silence, and I ask for the same courtesy in my case.

Mr Moore: That is because you were out of the chamber.

MR HUMPHRIES: I was out of the chamber for part of the time. Anyhow, I was silent. Mr Speaker, if we accept that that economic activity needs to occur, and I think we do, then we should support the means for it to take place.

We have recently announced an increase in the thresholds of payroll tax from 1 January 2001. It is a tax on business. As far as I can see, that increase in the threshold has support across the chamber. Why? Because we know that reducing taxation levels in the area of employment taxes will increase the opportunities for businesses to employ. Why do we believe it will be different in the area of betterment tax, the change of use charge? Why do we believe it is different in that area? No-one has explained to me why taxation in this level has no impact on economic activity whereas it does in respect of payroll tax or land tax or any other of the taxes that apply to businesses. Until they make that explanation, Mr Speaker, the argument should be accepted, based on Professor Nicholls' report, that betterment tax is a disincentive to economic activity and hence to employment, and reducing it therefore stimulates economic activity and creates jobs.

MR QUINLAN (5.25): Mr Speaker, just to clarify one point that was part of Mr Humphries' argument, the opposition supported 75 per cent as a compromise and not particularly because we adopted lowering the betterment tax at all.

I was not particularly taken with the logic of Mr Humphries using a one-off example like Impulse Airlines to say that there should be a general subsidy in which government is not involved. I have no doubt that in every activity within an economy there is a level of subsidy somewhere that will increase activity. Quite clearly, if you throw enough money around, someone is going to pick it up. Let me also make it clear that the ALP is not against government involvement in the stimulation of economic activity, but I would be fascinated to hear Mr Smyth, when he rises to close this debate, explain how it works in practice.

The Liberal Party is the party of economic rationalists, the party of pure market economics. If that is the case and we have a betterment tax, why is it not so that the value of the betterment tax is not automatically pushed down to the original owner of the property? In fact, if pure economics worked at all, then it would not stimulate any more activity at all. It would just up the price of the land if there are, in fact, legitimate market forces in operation. I would like to hear how that is going to happen. Have we really just got property owners and developers who are a bit smarter than old home owners?

Mr Humphries concentrated on betterment tax almost exclusively as a subsidy for economic activity. If that is the desired outcome, why don't we introduce a more logical, more efficient, and better targeted process, the individual subsidy that Mr Corbell mentioned in his speech? Why don't we target those areas that we want to happen and not generally allow a subsidy for every development? Quite obviously, in the current situation, as Mr Humphries quite accurately pointed out, many, many developments do not need the subsidy to have taken place. If we had the subsidy, the indiscriminate subsidy, then, of course, the community has paid for a great many developments that it need not have. So it seems to me to be quite dumb logic to say that we need a general subsidy, and I think we ought to dwell a little more on those particular activities that we do want to subsidise and that we do want to promote.

There must be in the ACT, eventually, a limit to the amount of redevelopment we do. There must be a limit to the amount of commercial space that we want. There must be a limit to the number of townhouses that we wish to build in inner city suburbs. So, sooner

or later, we cannot say we will build the economy on developments because something has to happen in those developments to complete the process.

If we are going to subsidise economic activity and we are going to throw money around, we should be throwing it around at the things that we want to happen. We do support the payroll tax initiative that the government has taken. We do it because that applies to business generally. It does not just apply to building places where business will happen or places where people will live. It actually goes to economic activity generally.

I have a fear that the phenomenon that we have already witnessed in the ACT could recur when times are not so good. We have seen Commonwealth departments moving out of old buildings because somebody, with a subsidy from the community, has built a new purpose-built building with all the gee whiz accoutrements and the capacity to carry the new electronic and digital accoutrements that buildings want. So we have new activity, we have new buildings going up and being occupied, and we have Hobart Place, or something like that, turning into commercial wasteland. That seems to me to be dumb planning. That is because, as I started out with these particular points that I wanted to make, there is a dumb logic in being indiscriminate in subsidising economic activity because you need some.

If we are going to be smart at all, we will continue to collect betterment tax on all developments. If there are some developments that swing on that particular element and we consciously at the time want that development to go ahead, whether it be for job creation or whether it just be a particular development that is desirable within the city, then we make a conscious decision to provide a subsidy for it. Equally, we take those funds that we might accrue by applying a betterment tax and we apply them to other economic activity beyond building the commercial blocks or housing.

It just seems to me that this is an over simplistic argument that the government has put forward. As has been pointed out and admitted, it is totally based on anecdotal evidence. Like virtually everybody in this place, I am sure, I have been lobbied by particular interests on the particular topic and I did ask for some examples I could specifically look at and say, "That might have happened and that might not have happened had there been a betterment tax or a different level of betterment tax." Again, it still does devolve down to anecdotal evidence and it is quite clear that there are not many cases that can be put forward and people can say, "There is a particular development that did not take place simply because of betterment tax." Even if that is the case, why would we then say, "Oh well, there are one or two developments we did not get because the betterment tax was too high. Therefore every development should enjoy this particular subsidy," as Mr Humphries has called it.

As I close, I would like to repeat my request of Mr Smyth. If there are economic forces in operation, and market forces is in operation, then why doesn't this bill just increase the value that accrues to the original owner of the block and effectively have no real impact on the final cost of the development.

MR SMYTH (Minister for Urban Services) (5.33), in reply: Mr Speaker, we have heard from all sides various arguments for and against this drop of change of use charge from 75 per cent to 50 per cent, and I think it is quite clear that the lines are fairly well drawn.

There is a curious point here in that the Assembly itself called for this report. It asked for the report to be done and I am told that the previous Assembly agreed that Professor Nicholls was the person to do it. It is curious that upon receiving this report, that does advise that we should drop from 75 per cent to 50 per cent, that we choose to disregard it. It is even disregarded after it was sent to the urban services committee and the majority of the committee did agree that 50 per cent was desirable. They did in fact validate Professor Nicholls' work.

It is quite clear from what Professor Nicholls says that it is, in fact, more than a perception. It is easy to say it is only a perception, but Professor Nicholls showed examples of the impact that change of use charge had on investment compared with investment in other areas. The example he quoted particularly was South Sydney. I believe, and I believe the report says, that the present system for determining the change of use charge has a negative impact on investment in the ACT. We have had many changes. There have been seven variations over the last nine years. The rate has bounced up and down. It is curious that the period before that, a period of some 20 years, was one of the most stable times in the ACT, and the betterment levy at that time was fixed at the 50 per cent rate.

Mr Speaker, the work was done. The report that Professor Nicholls has put together is an analysis of the evidence that was put to him. He has said that 50 per cent is the correct level. The urban services committee has validated that, except for Mr Corbell's dissenting report, and that is the reason why the government brings this bill back on.

We believe that the lack of certainty and the high level of the change of use charge, and the fear that it may go to 100 per cent, is a disincentive to investment in the ACT. We want to see certainty. We want to see people getting on, bringing their investments to the ACT rather than taking them elsewhere or doing less investment. We want to see that the system accommodates the building of a city that will last well into the years to come.

It is curious, at last, to hear from Mr Quinlan some support for the government on the payroll tax. I acknowledge his support; that there are other ways of assisting and making sure that appropriate assistance goes out to business development. I would disagree, yet again, with Mr Corbell and Mr Moore on their interpretation of what should happen here.

Mr Speaker, the government brings the bill back on because it believes it is important. It believes it is time that this matter was decided for a longer period. We have had seven changes in the last nine years. People continually complain that Canberra's development is too hard and too time consuming, or too costly, or too uncertain. We should get rid of those fears and get people investing in the ACT, helping us develop the city, creating jobs and creating certainty. For those reasons, the Assembly should support the government's bill.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes, 7	Noes, 8
Mr Cornwell	Mr Berry
Mr Hird	Mr Corbell
Mr Humphries	Mr Hargreaves
Mr Kaine	Mr Moore
Mr Rugendyke	Mr Osborne
Mr Smyth	Mr Quinlan
Mr Stefaniak	Mr Stanhope
	Ms Tucker

Question so resolved in the negative.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Impulse Airlines—Personal Explanation

MS TUCKER (5.42): I want to make a personal explanation under standing order 46. I want to respond to something that Mr Humphries said. He referred to the support for the Impulse Airlines project being unanimous. I think that that is something on which a response is needed. I was very concerned to see Ms Carnell's office putting out a press release after that debate saying that the Assembly had unanimously approved the Impulse plan. I am sure that members will recall that, in fact, it was not a vote of approval that was called for; it was that the Assembly notes particular actions of the ACT government.

We all thought it was rather strange that Mr Rugendyke called for a division at the end of that debate on the noting of some government actions. In fact, there was some laughter in the chamber that Mr Rugendyke had done so because there is obviously a clear understanding in this Assembly that noting a paper is not giving it support. I did clarify that with the Clerk as well after I saw the press release following the debate.

As I said, I was very concerned that the Chief Minister's office had put out a press release saying that, because it was really misrepresenting what happened in the Assembly. I think that it was mischievous of her office to do that because it was misrepresenting the situation.

MR SPEAKER: Speak about your position, Ms Tucker. It is a personal explanation, is it not?

MS TUCKER: My personal explanation is that I did not support any proposal. No proposal was put to me. I was asked to note some government actions. I had questions that I still want answered. I was happy to note what the government was doing, but was

not supporting it. I want to make that quite clear in this place. I seek leave to table the press release that came out of the Chief Minister's office. I think that it is quite scandalous.

Leave granted.

MS TUCKER: That is all I wanted to say.

Death of Mr Peter Mazengarb

MR KAINE (5.45): In the short time available to me at this time I would like to note the passing of a very good friend and to pay my own small tribute to him. Members may know that Peter Mazengarb passed away a week ago. Peter was a man who was very active in this community and I think it is worth taking a few minutes to reflect on his passing.

Peter spent most of his life in the military. He had a distinguished career there and retired with the rank of brigadier. But for me, the defining characteristic of Peter Mazengarb was not the fact that he had been a military officer. I did not know Peter during his military career. Although his service generally coincided with my time in the Air Force, we never met then. I met him later.

Those who knew Peter Mazengarb will know that he was a very active and energetic person. He was a person with a ready wit. He was a great talker, a great conversationalist. He was a raconteur; he could always tell you a good story. His greatest characteristic, in my view, was the fact that he had a very wide network of people he knew and with whom he could work. That network extended as high as to cabinet ministers in the Commonwealth parliament; so, when organisations or people needed some help or wanted something done, they would very often call Mazo and Mazo would get onto someone, somewhere and the problem would be solved.

In my view, he was a great contributor to this community, both at the communal level and at the personal level. Many of us in this place would have had Peter on the end of the phone many times or knocking on our door because someone, somewhere needed some help and he saw us as the people who could provide it. In fact, when he "retired" from the military he seemed to turn his energies and his resources to the task of helping others. He did that by private initiatives—many people were the beneficiaries of Peter's personal initiatives and actions—but also by working through organisations such as the Returned and Services League and Legacy.

Through those activities, he touched the lives of a very large number of people in this community and, because of his associations with organisations such as the RSL, right across Australia. I think that there are many people in Canberra, in particular, who have been and are beneficiaries of Peter's efforts on their behalf and there are many organisations that have had the benefit of his services over recent years.

I think that those of us who have been touched by Peter in our lives will deeply mourn his passing because of the type of person that he was and the kinds of things that he did for so many people. As far as I am concerned, Peter was a good friend and he was a good man to have around when you needed some help. Mr Speaker, it is my hope that Peter's

widow, Shirley, and his children and grandchildren will take some comfort from knowing that there are those who, like me, share in their feeling of loss and who, while mourning Mazo's passing, will treasure and value his memory.

Death of Mr Peter Mazengarb

MR STEFANIAK (Minister for Education) (5.47): I am very happy that Mr Kaine has spoken in the adjournment debate about Peter Mazengarb. Mr Kaine indicated to me earlier this afternoon that he was going to do so, and I am delighted to second his remarks and say that I, too, was very saddened to hear of Peter's death. Peter had not been well in recent times, unfortunately. I would certainly reiterate everything that Trevor Kaine said about an excellent Canberran and a great Australian.

Peter had a very distinguished career in the military. It ranged from World War II to Korea, even to Vietnam. As Trevor Kaine has said, Peter did not stop there. He did a lot of work with the Returned and Services League. Indeed, many of us who have been in Canberra for a long time might remember him as the voice of Anzac Day in Canberra for many years. Peter rose to be president of the local RSL for a time.

Peter certainly was a very interesting individual. He had a dry wit indeed and almost a laconic sense of humour. In the times I got to know him and the times I actually worked with him, especially more recently through the local Liberal Party and when he was campaign manager for the Ginninderra electorate in the 1998 campaign, I certainly got to appreciate his humour greatly. It was excellent in terms of raising morale at critical times. It was a sense of humour that those people who have been in the army would know about. I think it epitomised the Australian digger in times of adversity, raising the spirits of those round him. Peter had a great gift for that.

Peter was a great contributor. He was the sort of fellow who did not suffer fools gladly. He was also the sort of fellow who would always have a go, both for things he believed in and for other people. In recent times many of us in the Assembly would have had Peter coming to our door representing a whole range of problems and putting a whole range of points of view, always to the betterment of someone else in the community or some point of view that he felt would benefit our country and our local community.

Peter certainly was interested in contributing to many areas of his local community. That is something he did to the end. I join my colleague Trevor Kaine in expressing condolences to his family and mourning the death of a great Canberran and great Australian who contributed not only to his local community but also to the country as a whole through a wide variety of actions and a wide range of organisations during his quite extraordinary life.

Death of Mr Peter Mazengarb

MR HIRD (5.49): I join Mr Kaine and Mr Stefaniak in noting the sad loss of a very good and dear friend, Peter Mazengarb. Peter Mazengarb was for a time president of the RSL, a great Canberran and a determined person when it came to legatees. He was very persuasive and persistent in making certain that they were not forgotten. Peter did stand at one time for the position of national president but was unsuccessful. He was a great soldier.

I believe that Peter will be sadly missed by our community for the work that he has done. I must say on a personal note that he certainly assisted me in the 1998 election as the campaign director for the electorate of Ginninderra. He will be sadly missed. I join the two previous speakers in expressing condolences to his loved ones.

I know that Peter will be in another place giving directions if there is a problem, as he used to do to us when we had problems. If he perceived a problem to be one that we as elected members could resolve, he was very quick to bring it to our attention and insist that we get a result for the person or the cause that he was championing. I opened my remarks by saying that he was a good friend. His passing will be a sad loss to me, Mr Speaker.

Housing—Newsletter

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (5.51), in reply: I noted the comments today in question time by Mr Quinlan about the use of government publications to promote ministers. Mr Speaker, I have to observe somewhat wryly that, if Mr Brendan Smyth's department has been overzealous in promoting its minister, it has ample precedents to follow in such activities. I have a very thick file, which I have entitled "The Face of Labor", which is full of detailed publications—

Mr Stefaniak: There's Wayne.

MR HUMPHRIES: Indeed, there is one about Wayne. It has copious publications full of references and photographs of ministers. To pick one out, there is a publication—now discontinued—called "ACT Consumer Affairs Alert" with the then minister depicted on the front page in a photograph. There is another picture of the minister on page 2. There is a picture of the minister on page 3 as well. Page 4 has a reference to something the minister was doing. It said that the minister responsible for consumer affairs had warned about something. On page 5 there is another picture of the minister. Five out of five so far, which is pretty good. On page 6 there is another picture of the minister. It is only small, but he is there, Mr Speaker.

Mr Stefaniak: Is he in the sports pages, too?

MR HUMPHRIES: No. Page 7 is sadly lacking, Mr Speaker; there are no pictures of or references to the minister. Obviously, someone got the sack over that exercise! Again, page 8 starts off with references to the work of the minister for consumer affairs. Much as we are chastised by the comments of the opposition, we have to say that there are plenty of precedents for self-promotion and they do not come from this side of the house.

Question resolved in the affirmative.

Assembly adjourned at 5.53 pm