DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

29 November 2000

Wednesday, 29 November 2000

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MR SPEAKER (Mr Cornwell) took the chair at 10.33 am and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

LAND (PLANNING AND ENVIRONMENT) LEGISLATION AMENDMENT BILL 2000

Ms Tucker, pursuant to notice, presented the bill.

Title read by Clerk.

MS TUCKER (10.34): I move:

> That this bill be agreed to in principle.

This bill is quite short and involves a fairly simple change to the land act regulations, but the implication of this change is that it will restore third party appeal rights against development approvals of oversized single houses.

Part of the amendments to the land act that were implemented by this government in mid-1997 was the transfer of provisions for public notification and third party appeal rights from the Territory Plan to the land act regulations. In the process, there were significant reductions in the appeal rights available to objectors.

In relation to single dwellings, third party appeals used to be allowed where the development application did not meet the performance measures in the residential design and siting guidelines in the Territory Plan. However, this provision was removed from the new regulations, thus creating a situation where there are now no third party appeal rights against single dwellings, apart from houses in heritage areas.

That is quite significant, given the nature of the design and siting guidelines. These guidelines contain generalised performance objectives and criteria, as well as quantified performance measures or accepted solutions such as specific setback and height controls that are considered to meet the performance objectives. However, a house that does not meet the performance measures can still be approved if PALM considers that the design meets the overall performance objectives. PALM officials are therefore given considerable discretionary power to approve dwellings that cannot be legally challenged by neighbours who might be directly affected by the development.

With the increasing level of housing redevelopment in inner Canberra, including the complete demolition and rebuilding of houses in established neighbourhoods, I have received a number of representations from constituents who are now living next to huge houses that overshadow their block and reduce their privacy, but about which they could

do nothing. These people were able to put in objections to PALM on the development applications for these houses; but, if they did not think that PALM adequately took their objections into account in approving the applications, they had no avenue of appeal. This system made the planners unaccountable for their decisions.

Appeals may be cumbersome and delay the development approval process, but they also perform a very valuable role in providing the necessary checks and balances to the planning bureaucrats and maintaining the integrity of the ACT's statutory planning system.

The Minister for Urban Services has talked in the past about wanting to encourage high-quality design in Canberra. He has expressed a desire for a move away from tick-the-box development applications to a performance-based development approval system where proponents are encouraged to present innovative building designs to meet the principles and performance objectives of the Territory Plan. That is a quite admirable desire. However, there is still a need to maintain accountability in the planning system.

At least with a tick-the-box system everyone knew what could and could not be approved. However, in moving to a performance-based system there is much more discretion in what can be approved, which results in increased uncertainty about what development will actually be allowed. The need to maintain an easily accessible appeal process becomes even more important so that planners are kept accountable for their decisions and existing residents have the chance to express their views about the appropriateness and impacts of proposed developments around them.

I raised this proposal as part of an earlier private members bill which was primarily about the minister's call-in powers under the land act. Mr Corbell put up a contrary bill which was passed ahead of my bill. The government also raised concerns at the time about the workability of the amendments I put up. Therefore, I withdrew my earlier bill and prepared this revised bill which focuses on appeal rights.

It is not easy to explain how this bill would work in practice because it requires an understanding of how the land act regulations work, which are quite complicated. I am happy to talk privately to other members about the bill at a later time. As a simple explanation, let me say that the regulations currently provide a range of exemptions to the requirements in the land act for public notification and third party appeal rights against development applications.

In the case of development applications for single houses, many houses can be approved without any public notification provided they comply with a number of conditions listed in schedule 4 of the regulations; for example, they have a 6-metre setback from the front boundary or are only of one storey. If the house does not meet these conditions, the neighbours have to be notified and comments sought. But under schedule 7 of the regulations, appeal rights for any single houses are specifically excluded. Clause 5 of my bill simply deletes this exclusion, with the result that house applications that are notified to neighbours will be able to be appealed against. House applications that are currently not publicly notified will not be affected by this bill.

I have also included a transitional provision in my bill such that development applications for single houses that are still being processed by PALM at the time the bill comes into effect will not be subject to appeal. The bill will apply only to development applications lodged after the bill comes into effect.

In conclusion, this bill will simply revert the third party appeals rights available for development applications for single dwellings to what existed before 1997 when the Liberal government tightened planning appeal rights.

Debate (on motion by **Mr Smyth**) adjourned to the next sitting.

LAND (PLANNING AND ENVIRONMENT) AMENDMENT BILL 2000 (NO 5)

Mr Corbell, pursuant to notice, as amended by leave, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR CORBELL (10.44): Mr Speaker, I move:

> That this bill be agreed to in principle.

Mr Speaker, this bill follows on from the wide-ranging debate that this Assembly has had over the past 18 months particularly but more since the history of self-government on the issue of the change of use charge. Members will be aware that earlier this year the minister asked the Assembly to consider a proposal to permanently set the level of the change of use charge at 50 per cent. The Assembly rejected that proposal and, in effect, endorsed a move to restore the change of use charge to the default rate of 100 per cent.

A few months ago the minister for planning, Mr Smyth, introduced in the Assembly a proposal to set the rate permanently at 75 per cent. The Assembly chose on that occasion to consider setting the rate at 75 per cent only on a temporary basis until the Assembly could consider other issues relating to the proper administration of the change of use charge.

The bill I have presented this morning is meant to establish a new framework for the administration of the change of use charge in the territory. First and most importantly, Mr Speaker, the intention of the bill is to ensure that the default rate of the change of use charge in the territory is 100 per cent. The bill then makes provision for all or part of the change of use charge to be waived by the executive under a broad scheme which would be by an instrument disallowable by the Legislative Assembly.

Mr Speaker, the purpose of this proposal is to ensure that the change of use charge can be waived in particular circumstances where this Assembly agrees that it is appropriate either to encourage redevelopment in a particular area or to encourage certain principles in relation to sustainability and better design outcomes for buildings.

Mr Speaker, the bill broadly sets out that the change of use charge can be waived in whole or in part by the executive under a broad scheme via an instrument that would be disallowable by the Legislative Assembly. The bill also makes clear that this instrument should describe the circumstances under which the change of use charge should be waived and that the instrument should also describe the geographic area of the development where the waiver is proposed.

Further, the existing remissions of change of use charges for changes of boundaries and for Commissioner for Housing properties are being removed from the regulations and transferred into the act by this bill. These remissions are important for what are minor changes to leases and for leases relating to ACT Housing properties. Further, Mr Speaker, the bill provides for the other remissions currently provided by the regulations to be repealed and it is the intent of this bill to ensure that the government replaces those with substantive instruments under the new provisions.

Just to clarify that issue, Mr Speaker, currently under the regulations a remission or no remission, as the case may be, is granted in instances such as disused service station sites. It is the intention of this bill that we will have a clear instrument put forward in the Assembly by the minister to provide for remission or no remission in particular circumstances, rather than having them simply sitting in the regulations.

Mr Speaker, this bill brings a greater level of transparency to the operation of the change of use charge in the territory. It establishes clearly that the base rate for the change of use charge is 100 per cent, which is the only justifiable position for this Assembly to adopt in relation to the administration of a leasehold system in the ACT. It also ensures that any remission which can be granted to encourage a particular type of redevelopment activity is done in a transparent way and made disallowable by this place. I commend the bill to the Assembly.

Debate (on motion by **Mr Smyth**) adjourned to the next sitting.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2000 (NO 4)

Mr Berry, pursuant to notice, presented the bill.

Title read by Clerk.

MR BERRY (10.50): I move:

> That this bill be agreed to in principle.

Mr Speaker, if we in the community have learned anything over the years, it is that it is a commonly understood fact that workplace expedience will prevail over safe practice and that safety will be sacrificed in favour of a risky pursuit of productivity. Put bluntly, workers' lives and the futures of their families are put at risk daily in pursuit of profit.

Since coming to this Assembly, I have made it my business to take every opportunity to strengthen the territory's occupational health and safety laws in recognition of the risks that workers face, as evidenced by the unacceptable injuries and deaths which plague

Australian workplaces. Yes, members, significant advances have been made, but it is clear that much is left to do. The bill I have introduced today adds to my commitment to make ACT workplaces as safe as possible. This bill introduces a system of on-the-spot fines for minor breaches of the ACT's Occupational Health and Safety Act.

Mr Speaker, I acknowledge the support of non-government members in this Assembly—my Labor colleagues and Ms Tucker, Mr Kaine, Mr Osborne and Mr Rugendyke—for their contribution to my earlier moves to improve safety in ACT workplaces. You will recall the resistance and dissembling attitude of this Liberal government in the wake of their humiliation over the tragic hospital implosion and their failure to keep open possible prosecutions under the Occupational Health and Safety Act, notwithstanding the fact that the Attorney-General had been warned of the problems by the coroner.

The Attorney's failure to address this issue was, and remains, a significant indicator of what the Liberals feel about punishment for safety breaches. It is impossible to conclude any sense of concern about punishment against the background of this failure to act. That is true of the government in respect of the bill I have introduced today.

Five years ago the Industry Commission, in its *Work, Health and Safety* report, comprehensively recommended a shift to a more deterrence-based approach to occupational health and safety—yes, five years ago. In its assessment the commission said:

> In the Commission's view, the current approach to enforcement is not working. A survey by Deloitte Touche Tohmatsu on behalf of the Commission revealed significant non-compliance...The survey found that only 28 per cent of workplaces had a high level of compliance. The level of non-compliance exists despite strong efforts by the trade unions to identify general problem areas and to bring particular cases to the attention of the OHS agencies and its inspectorate.
>
> Although there is significant non-compliance, only a limited number and range of offences are being prosecuted. This is despite the actions taken by the trade union movement to draw attention to the areas in question. The Commission's analysis indicates that:
>
> - prosecutions are less than 5 per cent of formal sanctions by inspectorates;
> - where the right exists (New South Wales), only one private prosecution has ever been brought;
> - very few prosecutions are brought under the various Crimes Acts;
> - of the offences prosecuted, most involve death or serious harm;
> - most prosecutions are against corporations (as opposed to individuals);
> - 75 per cent of prosecutions are successful;
> - the average fine imposed by the courts is $3347;—

that was in 1995—

> - the highest fine ever imposed is $120,000 in Victoria; and
> - the maximum penalties—including imprisonment—have never been used in any jurisdiction.

Mr Speaker, in its report, the commission also said:

> The expected penalties are negligible. The Commission estimates that offenders face an expected penalty of less than $33, averaged over all the jurisdictions. They vary from $159 in Queensland, to $6 in the Australian Capital Territory. Only two jurisdictions have ever expected penalties greater than $33.
>
> On average, there is a 22 per cent chance of a workplace being visited by the OHS inspectorate in any year. If a prima facie breach of the OHS legislation is detected, there is only a 6 per cent chance of a conviction and fine by the courts. In the ACT the probability of being penalised—

wait for it—

> is less than 1 per cent.

Yes, there have been changes in the ACT, but those were the facts that gave rise to the commission's recommendations in relation to the matter. The report went on to say:

> The low expected penalty for non-compliance implies that current enforcement policies have little or no deterrence effect. They are unlikely to discourage those who for reasons of ignorance, apathy or financial gain breach the law.
>
> This is not surprising. A policy of first persuading individuals to rectify an unsafe situation, by giving advice or compliance notices, could be expected to do little to deter others. Everyone knows if they are found in breach of the law, they will generally be given an opportunity to comply without a penalty being imposed. At best this will deter those who have been detected from committing another breach (and that may be questionable). However, it does not deter those yet to be found out because they know that they will be given a second chance.

Recommendation 17 of the report proposes on-the-spot fines for breaches of the occupational health and safety legislation. The report drew attention to the point that in 1995 the ACT government was considering their use. In the year 2000 the community is yet to see a response on this important issue. Five years later there has been nothing but inaction on this issue.

It is also clear from the report that the introduction of on-the-spot fines must be accompanied by an easily understood appeal system, along with thorough inspectorate training. I agree with the commission's recommendation that we should introduce on-the-spot fines. That is the focus of the bill I have introduced today.

It is my aim to ensure that on-the-spot fines are available as a strong deterrent against breaches of the law and of the codes of practice in respect of risk and harm and that a clear set of operational guidelines are developed for inspectors to ensure that this type of enforcement regime is adopted and applied judiciously.

I expect that, in practice, infringement notices would only be used for lower order breaches and that the maximum penalties available in the act would remain an active punishment in the courts for breaches of the legislation. The use of on-the-spot fines, or infringement notices as they are referred to in the bill, is consistent with the approach being taken generally by the government in respect of legislation which provides for

administrative penalties. I am advised that a similar approach is taken in the territory's road transport, litter and nature conservation acts, subject to any changes necessary to accommodate the subject matter of those laws.

In addition, the bill will widen the scope of possible penalties in relation to the prescribed penalties set out in section 27 of the act, which relates to the duties of employers in relation to employees, section 28, which relates to the duties of employers in relation to third parties, and section 29, which relates to the duties of persons in control of workplaces. With the passage of this bill, a decision on the issuing of an infringement notice or an action in the courts can be made taking into account the availability of codes of practice and compliance with them.

In my view, this move is significant in that it will provide a comprehensive reference point for consideration by WorkCover inspectors when forming a view about a possible infringement notice for a breach of sections 27, 28 or 29 of the act. According to the government's home page, there are 10 codes of practice which relate in one way or another to many of the ACT's workplaces. Members should note that regulations made pursuant to the act may also serve as a relevant matter to be considered by an inspector in forming the view that issuing an infringement notice is the appropriate course to follow.

Twenty-eight infringement notices have been set out in schedule 1 to the amended regulations accompanying this bill. These infringement notice penalties have been calculated to approximate one twenty-fifth of the prescribed maximum penalty in the case of major penalties, scaling downwards to an infringement notice penalty of $100, but have no application where the maximum penalty involves a jail sentence. I consider these penalty levels appropriate at this time as they are set at a sufficient level to create a deterrence against breaches of the act.

Fundamentally, this bill is about providing an addition to the armoury of our newly independent Occupational Health and Safety Commissioner in the pursuit of a safer workplace for the benefit of a wide cross-section of our community. I am confident that the passage of this bill will improve compliance in the workplace. It follows that this bill will lead to less pain and suffering from lower accident rates, lower workers compensation premiums and higher productivity and profits. This is undoubtedly a necessary reform which will improve social outcomes. Members, I seek your support for this important piece of legislation.

Debate (on motion by **Mr Smyth**) adjourned to the next sitting.

AUDITOR-GENERAL AMENDMENT BILL 2000

Mr Osborne, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR OSBORNE (11.00): I move:

> That this bill be agreed to in principle.

Mr Speaker, the Auditor-General has a very important role in the life of a parliament. At the top of the list of functions and responsibilities already included in our Auditor-General Act is an obligation to promote public accountability in the public administration of the territory.

I think that we have all learned a great deal about accountability over the past two years and become quite familiar with the Auditor-General Act itself. Accountability is a part of everyday life for every member of parliament and for the government of the day. However, there are degrees of accountability for each of us.

Members of a parliament are at various times held accountable by the ballot box, through interaction with the media and by members of the public as they go about their duties. The level of scrutiny and accountability placed on the government of the day is justifiably high. I once heard that the spending of taxpayers' money was a sacred trust. The public have high expectations on this point and are aided in this respect by the Auditor-General. To quote former New South Wales Auditor-General, Tony Harris:

> Governments have always been accountable in the widest sense of that term for their use of public moneys. Thus, they always have had to defend: the appropriateness of their policy objectives; the effectiveness of the mechanisms used to meet those objectives; the efficiency in their use of available resources; and the economy with which they acquire those resources. They are also accountable for their compliance with the law and for the probity or ethics of their actions. It is not different today.

That is as good a description of the role of the Auditor-General as could be found. It was through meeting with Mr Harris over the Bruce Stadium report that I initiated this bill before us today.

The Auditor-General's inquiry into the Bruce Stadium redevelopment and subsequent report have highlighted for me a number of deficiencies in our legislation. I refer firstly to the notion put forward by the government that the Auditor-General, Mr Parkinson, had gone beyond the boundaries of his brief and wrongly included comments on whether the redevelopment represented value for money.

I am surprised that the government still believes that to be so. I disagree, and in my reading of the Auditor-General Act I cannot find a section that says that the Auditor-General must restrict himself to certain categories of comment. However, in order to make it absolutely clear, I am seeking a change that will allow the Auditor-General to conduct an inquiry and comment on any matter that he sees fit. I believe that this is the sort of latitude that the act was intended to provide in the first place and is exactly the latitude afforded under New South Wales law.

Secondly, I have provided for the Auditor-General's reports to be presented out of session and for all reports to be referred to the public accounts committee for whatever consideration they regard as appropriate. I realise that it is Assembly convention to refer reports to the committee, but there is no compulsion either in the act or under standing orders to do so. I have added a further requirement for the Auditor-General to appear before the committee as a witness to discuss the contents of each report.

A third reform is to provide a trigger for additional funding for the Auditor-General should the Auditor-General take on an unplanned performance audit and find the audit cannot be conducted in a timely manner. Again, that was a lesson learned from the Bruce Stadium audit. At the Estimates Committee this year, Mr Parkinson made a comment along the lines of that particular audit having unexpectedly swallowed his resources. In any future case under this legislation the Auditor-General would be able to notify the public accounts committee of the need for additional funding. If the committee were convinced of this need, they would then notify the minister, who would then be required to visit the Treasurer's advance.

The final reform in this bill seeks to address the unnatural tension for the Auditor-General, as an employee of the government, in being expected to place the government under the strictest scrutiny. I would like to point out, Mr Speaker, that at no time am I suggesting that Mr Parkinson has compromised himself or not performed his duties properly. In fact, I think he did a tremendous job on the Bruce Stadium audit under very public and difficult circumstances.

That aside, however, I have proposed a change contained in the New South Wales act that the Auditor-General be appointed for a seven-year period with no possibility of reappointment. The Auditor-General is there to provide scrutiny at arms length from the government. A change to this regime could only assist the Auditor-General to do so.

Mr Speaker, I believe this legislation to be of good value to the territory. If enacted, it will ensure that the Auditor-General gets all the assistance needed to do the job well and in a timely manner.

Debate (on motion by **Mr Smyth**) adjourned to the next sitting.

NEEDLE EXCHANGE BILL 2000

Mr Osborne, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR OSBORNE (11.05): I move:

> That this bill be agreed to in principle.

Mr Speaker, contrary to some uninformed opinions, this bill is not a punitive measure against those in our city who have made the tragic life choice of illicit drug use. Those who are addicted to intravenous drugs such as heroin are in a most precarious position. Their choice of drug-taking behaviour places their health and the general wellbeing of those around them at grave risk.

By and large, their choice is motivated not by positive life experiences but by circumstances that have made them so miserable that they care little for their welfare and the consequences of their behaviour. They are looked down upon by some sections of society because that behaviour is so destructive, because they appear threatening and because they are extremely needy yet sometimes despise genuine assistance.

Mr Speaker, this legislation does not punish them in any way, nor does it withdraw or reduce their access to services. Rather, it seeks to address a point of balance that is of concern to many in the community and to provide a reasonable compromise between the conflicting interests of this harm minimisation measure.

Needle distribution and needle exchange programs began in Australia about a decade ago in response to an alarming spread of HIV and hepatitis C amongst the intravenous drug using population around the world. In Australia, the incidence of blood-borne viruses has been kept under fairly good control. This has been due to a number of factors. I am happy to agree that one of those contributing factors is a reduction in the risky practice of needle sharing. To this end, easy access to clean injecting equipment has played a part.

Before I go on to explain the main points of this bill I would point out that, just as needle distribution is not intended as the answer to our illicit drug problem, this legislation is not an attempt at a comprehensive solution. Many of our community have a dim view of needle distribution. I have generally found that opinion rising out of the dual concerns that those who receive a syringe are intending to break the law as it currently stands and that there are much better ways of addressing the real and felt needs of drug users.

I believe that there are few in our city that indiscriminately hate drug users. Instead, there is widespread concern for their welfare. However, they are equally concerned about the level of current treatment options and that those options do not impose too greatly on the 98 per cent of those who choose not to take intravenous drugs.

Mr Speaker, I have made no secret of what I think about some aspects of harm minimisation policy. In fact, I have so little regard for the concept in general that next sitting I will be presenting for the community's consideration a comprehensive alternative drug policy that is based on a successful Swedish model. That policy is based on the principle of harm prevention, with the main emphasise being on education, rehabilitation and treatment, and law enforcement. I would also point out that a needle exchange program will be included in that policy.

This bill seeks to do four things: one, to restrict needle distribution and exchange to registered facilities; two, to provide regular reports to the public via this Assembly on the activities of those facilities; three, to ensure that facilities distribute needles on either an exchange or sale basis; and, four, to allow up to 10 needles only to be given out at one time.

Mr Speaker, other than simplistic assumption and knee-jerk opposition by hard core harm minimisation zealots, there is nothing in this bill to suggest that needle exchange activity is in any way under threat. On the contrary, there could well be a number of positive outcomes if there is the will to put this legislation to work. I am convinced of this, Mr Speaker, because of extensive research and a consideration of scientific studies that have been done in Europe and North America.

Of course, for this legislation to work would require a far more positive response than the Neanderthal politicking that the Leader of the Opposition displayed to this bill yesterday. I make no apology for holding strong views or opinions, nor do I care much that the ALP occasionally finds them to be unreasonable. However, to label someone

a bigot simply because they hold a different point of view on a particular issue is typical of the sloping-forehead and knuckles-dragging-on-the-ground approach that the Labor Party has become so famous for in the ACT.

It is good to know, Mr Speaker, that there are no bigots in the ALP; what a relief that is! It is good to know that they hold no strong views on any issue, and whatever views they do have on any given subject are agreed with by the entire Canberra community! I also note that, while the ALP may criticise this bill, they have no solution to offer to the problems posed by the tens of thousands of used needles that litter our community every year.

I would be interested to hear how much weight the Labor Party has placed on the opinions of some of their own members, such as the Transport Workers Union and the CFMEU. Both unions have publicly stated this week that the problems caused by discarded needles are horrendous at construction sites and other workplaces around the city.

While the opposition fancies themselves as the champions of occupational health and safety, they might do well to listen to what their own people are saying and take a closer look at their working conditions. Here is a chance for them to do something positive for their own members, instead of just dishing out a bit more bland and stodgy criticism.

Mr Speaker, I am pleased that the proponents of needle distribution have at long last accepted that the unsafe disposal of used needles is a problem, although there is still disagreement about the actual size of the problem. Some of the literature I have read over the last year or so by pro-needle groups, such as the Australian National Council on AIDS, Hepatitis C and Related Diseases, presents quite a distorted or, in fact, dishonest picture of the discarding of needles.

Either they downplay the extent of the problem or deny outright that a problem even exists and say that it is all just a beat-up by the media as they pander to the prejudices of the public. In case members are a bit sceptical of that claim, I quote from a May publication of the organisation I just mentioned, entitled *Needle and syringe programs: your questions answered*:

> Needle and syringe programs provide disposal for used needles and syringes and reduce the number of improperly discarded needles and syringes by providing information to their clients about safe disposal and by cleaning up discarded injecting equipment on a regular basis. Almost all needles and syringes are disposed of safely and appropriately. Needle and syringe programs can decrease the number of improperly discarded syringes left in an area.

Obviously, whoever wrote that piece of propaganda has never walked around Canberra with their eyes open. Mr Speaker, I and many others in Canberra have grown tired of the ever increasing number of used syringes and needles we come across in public places in the city. They can now be found in almost any public space: school playgrounds, parkland, around children's playing equipment, on sports fields and in waterways and car parks, to name but a few.

A favourite trick in downplaying the problem is to count only the number of reports of discarded needles and the number of needles collected by various officials. This method does not take into account the vast number that are undiscovered by members of the public and go unreported or those discovered at workplaces, such as recycling facilities and building sites. The number discarded each year is not just a couple of thousand; rather it is many thousands, and growing.

I do not accept that taking intravenous drugs, such as heroin, is profoundly normal behaviour; nor do I consider that the small percentage who have chosen this lifestyle should hold the rest of the community to ransom because they just throw away their used injecting equipment, instead of properly disposing of it. Unfortunately, in this case, in reducing harm for the few, harm has been maximised for the many.

Just as needle distribution was intended to change a drug user's behaviour away from risky injecting practices, this legislation is an attempt to change their behaviour away from unsafe disposal practices. To that end, a requirement of our needle distribution facilities to operate on an exchange basis could have at least two benefits: one, a reduction in the number of discarded needles and, two, it would bring drug users into regular contact with health workers.

I note that the latter point was one of the two reasons for establishing needle distribution outlets in the first place, but that principle seems to have been set aside in comments made over the past couple of days. Of course, allowing drug dealers to take away 100 or more needles at a time to distribute to their clients further erodes this important point. I wonder how many members were aware before the beginning of this week that we have drug dealers working for the government. I know the health minister was not; nor was I. That was certainly an unwelcome surprise to me.

Mr Speaker, I would like briefly to address some of the comments the health minister made about this bill earlier in the week. Among other things, he said that his focus was on reducing the risk of blood-borne diseases, especially for unborn babies, that it would encourage unsafe injecting practices and that there has been no recorded incident anywhere in the world of a person catching HIV or hepatitis from a discarded needle.

Mr Moore: I never said unborn babies; I just said babies.

MR OSBORNE: His suggested solution on Monday was that we should have had the injecting room as that would fix the problem with needles on the streets. Unfortunately, one of the problems I find with this solution is typical of the more radical components of harm minimisation measures. When one of their programs fails or runs into problems, the solution is a more extreme measure than the one that created the problem in the first place. When that one throws up an unexpected glitch, they suggest a move to something that is even more extreme.

Be that as it may, I will take his other three points one at a time: firstly, that the bill will undermine the current focus on reducing the risk of disease, especially for children. I have removed the word "unborn", Mr Speaker, as Mr Moore has indicated that he did not use it. The notion that a requirement for needles to be either exchanged or purchased at the paltry cost of, I think, 13c each would increase the incidence of HIV and hepatitis

in our community is, in my view, just scaremongering. This legislation does not restrict access to clean needles, and I would not be bringing it forward if it did.

I realise the minister's fondness for comparing the prevalence of blood-borne viruses of New South Wales and New York and his comparison of the two demographics intrigues me more than a little, but the minister will be as aware as I am that injecting drugs is just one of several factors involved in the spread of blood-borne viruses. Scientific studies are often rendered inconclusive when the various sexual practices of drug users are included as users tend not to protect themselves against sexual transmission to the extent that they do against intravenous transmission. I think the minister is yet to offer any real evidence to back his claims, other than that he disagrees with the idea.

Likewise, the minister's second argument that a needle exchange system would encourage unsafe injecting practices is guesswork. His third argument that no-one in the world has ever contracted HIV or hepatitis from discarded needles bears scrutiny. This is a common claim by committed needle distribution supporters. Again, I would like to quote from the publication I referred to by the Australian National Council on AIDS, Hepatitis C and Related Diseases. In answer to the question, "If you tread on a syringe in the park, should you have an HIV or hepatitis C test?" the following response is offered:

> One fear is that an injury from discarded injecting equipment may result in infection with HIV or hepatitis. Sensational and emotive coverage of these issues in some media have exaggerated the risk. Although this is an extremely upsetting experience, the risk of contracting an infection such as HIV or hepatitis from discarded needles and syringes in public places is extremely small.
>
> There have been cases of transmission of blood borne viruses through needlestick injuries in health care settings, but these are rare. There are no published accounts of HIV, hepatitis B or hepatitis C infection after a member of the general public has been injured by discarded injection equipment.

This publication backs up the minister's claim 100 per cent. Mr Speaker, we seem to have scored another world first in Canberra, because there is a documented case of a non-health worker contracting hepatitis B from discarded injecting equipment earlier this year. If the minister or the ALP wish to test this claim, I suggest they contact the ACT branch of the TWU and listen to what they had to tell me yesterday. The transference of infection can, and does, happen and the public is at risk, no matter how small the risk.

Mr Speaker, I am prepared to listen to intelligent arguments over this bill, but not claptrap dressed up as informed opinion. Those who disagree with this bill should do so with honesty and come to the debate with some substance to back up their comments. It is of concern to me that there is so little in the way of concrete facts about this whole issue.

In over a decade, no proper studies have been done in Canberra about needle distribution, and we have already lost the opportunity to gather essential baseline data. I trust that such a study will be done as soon as possible, but not one conducted by the local harm minimisation mafia. We need to have a proper independent study done at arm's length from those who are either working in or closely associated with the local

drug scene; one that is conducted by those who possess no predisposed point of view either way.

By way of closing, Mr Speaker, I would just remind members that there are many thousands of needles discarded unsafely in Canberra every year, many of which are discovered by members of the public and pose a health risk of some kind to those who find them. Some of these needles cause injury. I believe that this legislation does provide an opportunity to reduce the number of discarded needles and improve the amenity of public space in the city without further risking the health of intravenous drug users.

Finally, Mr Speaker, I do envisage that perhaps the legislation will be amended at some stage, because I am hopeful of negotiating a compromise with the government on the issue of retractable needles. I look forward to working with the government on that issue and on this very important issue. I commend the bill to the Assembly.

Debate (on motion by **Mr Moore**) adjourned to the next sitting.

INQUIRIES AMENDMENT BILL 2000

Mr Rugendyke, by leave, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR RUGENDYKE (11.21): I move:

> That this bill be agreed to in principle.

Mr Speaker, I present this bill today as a clear-cut solution to the impasse which has developed due to the government's refusal to comply with the majority will of the Legislative Assembly and instigate an independent inquiry into disability care services in the ACT. Members are aware of the background and I will endeavour not to churn up old ground. However, I believe that it is important that I briefly set the scene to show how we have arrived at this point and highlight why it is essential that the Assembly support this bill to ensure that democracy does prevail now and into the future.

We all know that in October the Assembly passed a motion calling on the government to appoint a board of inquiry under the Inquiries Act 1991 to investigate disability care matters relating to a range of systemic issues, including service quality, service monitoring and accountability, consumer protection and complaints, and resource allocation. The Assembly passed the motion 10 votes to seven, but the government has done everything possible to resist the will of this chamber.

The core of the problem is that, under the presiding act, it is the executive that has the call. The Assembly can say what it likes and can pass any form of motion it likes, but at the end of the day the executive can defy the democratic vote of the 17 elected members. In this case, that is exactly what the cabinet has done. In short, this bill fixes that problem. This amending bill proposes to make such resolutions binding.

Over the last two years I have had recurring knocks on my door from people sharing their deep distress about ongoing issues in the disability sector. I have heard stories that would absolutely break your heart. Any reasonable member who has opened their door to the community would know the types of concerns I am talking about. But these are not just isolated instances.

The trickle of unrest that I have encountered has grown steadily over the past two years and reached a groundswell as the government begrudgingly made public news of the three deaths over the last year. But the three deaths are not the extent of the concern to families who have loved ones in disability care. They have genuine concerns and they are entitled to have them heard. I am determined to help provide them with that forum.

I am not the only member who shares this view. In recent weeks, I have worked closely with Kerrie Tucker and Bill Wood, who also have a longstanding commitment to this field. Only yesterday we held discussions with the health minister and the Chief Coroner, Mr Ron Cahill, who reiterated his preference for an independent inquiry to be delayed until after the coroner's report is completed. That may not be until at least the end of next year. Unfortunately, the government has latched onto Mr Cahill's opinion as an excuse to block the implementation of the Assembly's resolution.

I have thought long and hard about what is the most suitable method to reach a solution. Yesterday our talks achieved little. This stalemate situation is something that is likely to occur in the future and it is clear that we require a mechanism that will preserve the democratic vote. A number of alternative approaches have been raised in response to the government's refusal to appoint a board of inquiry.

The health minister clearly would prefer to conduct a watered down version of the resolution. He does not want a board of inquiry under the Inquiries Act. He wants something on a smaller scale. As far as I am concerned, anything resembling an internal investigation would not be good enough. The original motion purposely does not mention the three deaths and was drafted so that the range of other issues and incidents could be addressed. An internal investigation simply would not be satisfactory.

Ms Tucker suggested the moving of a motion of no confidence in the health minister. That would be difficult to achieve because the decision was a cabinet decision and, in reality, taking out a minister would not guarantee the establishment of an inquiry anyway; so that is not an appropriate route to take. Then there is the option of bringing back and strengthening the original motion. It seems, though, that that would not alter the fact that the executive, once again, has the discretion and it can again ignore the will of the Assembly. The clear-cut, sensible approach that ensures the will of the Assembly is implemented is to amend the Inquiries Act in the manner I am suggesting today.

There were two heartening comments that I did take out of the discussions of yesterday. Firstly, Mr Cahill made it clear that, while it was his opinion that the independent inquiry should be delayed, it was still a matter for the Assembly to decide. There is a distinct separation of powers and if it is the will of the Assembly to proceed, then it can proceed. Secondly, the health minister made it clear to the meeting that if my bill was passed the executive would have to appoint the board of inquiry. Those of us who have been fighting for this cause would finally arrive at the appropriate outcome.

I would like to foreshadow that I am tabling this bill today to enable us to have it debated next week. It is crucial that this situation be resolved and I will be seeking to have the bill debated and resolved before we break for the Christmas period. In a case like this where an absolute majority of the Assembly is compelled to support an inquiry, it is democratically appropriate that the inquiry go ahead.

That is a fundamental principle that the health minister attempted to introduce when he was on the crossbench. He announced the drafting of a bill to make it unlawful for the government to ignore a binding resolution of the Assembly, so I would expect that the health minister would be supportive of this bill, too.

I would like to read briefly a story published in the *Canberra Times* of 18 May 1995 under the headline "Bill plan to boost Assembly powers". It reads:

> In an effort to give the Legislative Assembly more power over Cabinet, Independent MLA Michael Moore is drafting a Bill that would make Assembly resolutions binding. It would make it unlawful for the government to ignore a binding resolution of the Assembly. He issued drafting instructions to parliamentary counsel in April and expects to introduce the Bill in September. He said that it would be his most significant step in a series of manoeuvres intended to return power to the Assembly.

Mr Moore is then quoted as saying:

> It is a return to the Westminster system before the party system and particularly party solidarity took over.

I am looking at a similar proposal because there has been no reasonable argument presented to stop the inquiry endorsed by the Assembly going ahead. The Chief Coroner states in his letter to the government that any coronial inquest into systemic issues must have a relationship to the deaths, but there is a range of other issues not related to the deaths that require urgent investigation and I am not prepared to wait another year or two for that to happen.

The Chief Coroner also stated that the conducting of an inquiry without any reference to issues involved in these three deaths remains a matter for the consideration of the Assembly and the government; in other words, there is no reason to stop the inquiry proceeding. If our hands were tied until the completion of every coronial inquest, theoretically we would never be able to hold an inquiry.

Mr Speaker, this is the solution to the problem and I commend it to the Assembly.

Debate (on motion by **Mr Humphries**) adjourned to the next sitting.

FEDERAL GOLF CLUB REDEVELOPMENT

MR KAINE (11.32): I move:

> That pursuant to section 37(2) of the *Land (Planning and Environment) Act 1991*, the Legislative Assembly recommends that the Executive direct the Australian Capital Territory Planning Authority to review the Territory Plan by resubmitting plan variation No 94 relating to Red Hill section 58, block 1 (Federal Golf Club redevelopment) which was rejected by the Assembly on 14 October 1999.

Mr Speaker, it is just over a year ago that the Assembly considered this variation, under which the Federal Golf Club sought to gain approval to build some residential units on part of the unused land on its lease. The Assembly curtailed the variation process by rejecting it. It is my opinion that, in light of events that have occurred since then, and had the members of this Assembly known what the consequences would be of the rejection of that variation, they may have come to a different conclusion. In my opinion, what is happening now is an outcome that is not in the public interest, for a number of reasons, and I think that the Assembly would do well to reconsider that variation. So I am seeking the cooperation of the government in bringing that variation back so that the Assembly can reconsider the position that it took over a year ago.

Members will recall the variation, I am sure. It proposed a number of residential units on the northern extremity of the golf club lease, land currently not used by the golf club, and a very significant part of that proposal was that an area of 9.2 hectares of land predominantly on the western side of the golf club would be returned to the community, as being outside the foreseen requirements of the club. The money that was going to be generated by this development was going to be used by the club to improve its facilities and particularly to take care of grey-water recycling, water retention and fairway maintenance, together with some minor works to the clubhouse and its environs.

What has happened now is that, since the variation had been rejected, the club has had a look at its options and, on the basis of a letter that it wrote to me—and I am sure that I was not the only member of the Assembly that received this letter about a month ago—it has decided to go ahead with what it describes as an "as of right" development under its lease. That proposal is to build a golf lodge-style hotel with up to 140 bedrooms, catering for one, two or three persons, together with a conference facility, a banquet hall and an area for the club's own administration and social activities.

To my mind, the objection of the community in Hughes and Garran to such a proposal must be much stronger than its objection to the original proposal of a few townhouses, because at least townhouses are consistent with the general development in the area. But the development that is now proposed by the club will be quite out of character with the general residential amenity of the area.

Furthermore, because of its very nature, a residential development there would not have denied access to that area by the general community. A lot of people said, "We used to work through that area as part of our recreation." I think that the residential development that was proposed would have still allowed them to do that. But the proposal that the club is now putting forward would seem to me to make it totally unusable by the

community who used to, and probably still do, walk through there for recreational purposes.

A large hotel-type building with conference centres and an administrative complex would, in my view, totally preclude the possibility of access by the general population around the area. It would be totally denied to them, whereas it would not be denied to them totally under the original proposal.

Furthermore, since the variation was rejected, the club is no longer under any obligation to return to the community the 9.2 hectares of surplus land. It will retain it and, presumably, at some future time, use it for whatever purposes suit the club, as long as they are within the terms of the lease that it has. Now, it seems to me that this is a totally bad option that has been presented to the club. Of course, another factor is that, under the original proposal for the variation to the plan, the community would have received the benefit of the betterment allowance, at whatever rate was applicable under the act. Mr Corbell mentioned that in an earlier debate. The rate is 100 per cent at the moment.

Mr Corbell: It is 75 at the moment.

MR KAINE: They would pay betterment tax at whatever rate the act prescribes. But, if they go ahead with an as of right development under the existing lease, no such payment is required. Regardless of whether they do it as of right or as a result of the variation to the plan, future rates on the land would change as a result of a Taxation Office valuation, I imagine. But under an as of right development the initial up-front betterment payment disappears; it does not exist.

There is another aspect of this. I am aware that the original opponents of this proposal in the Hughes and Garran area still have concerns about any development there. Well, the fact is that under an as of right development those people have no formal means of registering their objections. They have no way of even determining, as of right, what the club is proposing. The club is not bound to tell them. And no formal consultation mechanisms are provided for if the club proceeds with what I believe is its non-preferred option. So the people of that area who have concerns have no method of having those concerns discussed, debated, and resolved under an as of right proposal.

On the other hand, if that proposal is restored and the thing proceeds through the proposed variation method, which, as I said, this Assembly curtailed—in fact, it just cut it off and said, "No. We're not going to let that go any further"—then under the law those people have a right to be consulted, they have a right to express their view, they have a right to have their objections taken into account by the planning authorities and they have a right for their views and the authority's response to be published. So, for obvious reasons, the proposal by the club to go ahead with an as of right development is not in the public interest.

It is not in the public interest from the planning viewpoint—I think it will result in a bad planning outcome—it is not in the public interest in terms of the fact that the betterment payment will be lost to the community, and it is not in the public interest in that the people who have a genuine concern about what is happening there lose their rights under the law to have their concerns heard and properly considered.

I believe that the proposal is totally unsatisfactory from everybody's viewpoint. And I believe it is really unsatisfactory from the club's viewpoint because my understanding is that this is not its preferred course of action. It has come up with this proposal as an alternative only since its original proposal under the planning mechanisms was rejected, and it had to find some way of accumulating the funds that are needed to make the club a useable club and to make the golf course a useable course—to provide for water, to recycle the grey water and to do essential maintenance that is required to maintain the club in existence as a viable golf club.

As I said before, I honestly believe that, had we known what the consequences of rejecting the variation would be when we rejected it a year ago, we may well have taken a different course; we may well have come to a different conclusion. I think the only way to resolve that, and to put the matter back into the public arena where matters can be properly and satisfactorily dealt with in the interests of the club and its members and the interests of the community at large, is to bring the matter back into the planning mechanisms and processes and deal with all of the issues, including the community's concerns about it, in a formalised and proper fashion. That would at least make sure that their concerns are dealt with because, while they have continuing concerns with the alternative proposal that is now before us—well, it is not before us; it is going ahead without us—the fact is that members of the community have no formal mechanisms through which they can consult and have their concerns properly taken into account. Well, they do not exist and I don't think that is good enough.

I am urging members to support my motion asking that the government bring back the variation for further consideration and we can then consider the original proposal again. We can reconsider it on its merits, and this time in light of what the less desirable alternatives might be if we again reject that variation. I seek the assistance and the support of members first of all to bring it back for consideration, and I seek the assistance of the government in taking what is perhaps an unusual step to resubmit to the Assembly this original variation proposal so that we can have another look at it.

MR CORBELL (11.43): Mr Speaker, the Labor Party believes there is no merit in supporting the proposal put to the Assembly today by Mr Kaine. There is no merit in it because Mr Kaine's whole argument is based on a series of assumptions and presumptions without any concrete evidence whatsoever. Mr Kaine asserts that the reason that this Assembly should request the minister to direct the Planning Authority to again bring forward a draft variation to permit residential development at Federal Golf Club is that the club will do a development of a hotel if we do not.

But how sure are we, as an assembly, that that is going to occur? First of all, I guess Mr Kaine would say we have the advice of the club. The club is, of course, entitled to assert that it believes that it has a right under its lease to pursue a hotel/motel-type development. But what are the facts? The fact is that no development application has been lodged. In fact, there is actually no plan whatsoever of what the club is proposing to build.

So how can Mr Kaine make a judgment that this proposal would be more undesirable than the previous one when there is no plan—when there is absolutely no formal proposal before any government agency, or indeed, as far as I am aware, before any member of this place, that outlines exactly what the proposal will look like? Mr Kaine

cannot assert that it is more undesirable because he does not even know what the thing is going to look like.

Further, Mr Kaine suggests that the Assembly should agree with the club when it asserts that it can pursue a hotel/motel-type development as an as-of-right development consistent with its lease purpose clause. I think that question is a very open one. If you look at the lease purpose clause of the Federal Golf Club, you will see that it says that the lease "allows for a golf club and for purposes incidental thereto"—"incidental thereto". Now, I would suggest that it is unlikely—not impossible but unlikely—that a hotel/motel development could simply be considered as incidental to the purposes of running a golf club.

Indeed, I sought a briefing from officers of PALM, through the minister's office, on this very issue. The advice I received was that they were looking closely at the lease purpose clause, that they were asking the club to demonstrate how a hotel/motel would be incidental to the purposes of running a golf club and that they would be seeking advice from the Government Solicitor on the interpretation of the lease purpose clause.

Mr Moore: A proper process.

MR CORBELL: That is a very proper process, as Mr Moore interjects. But until that process is completed we cannot accept the assertion made by Mr Kaine that the club can simply proceed with a hotel/motel development. There are too many unanswered questions.

Bearing all that in mind, we also have to consider the decision that was made by this place just over a year ago. Mr Kaine said that the Assembly had short-circuited the process. Well, no, the Assembly did not short-circuit the process; the Assembly played its role in the process. Under the land act, the Assembly has the option, if a majority of members in this place believe it is warranted, to effectively veto a proposal to vary the Territory Plan—to disallow it. The Assembly agreed that it was appropriate to assert that right. So there was no short-circuiting of the process—far from it. There was a very detailed discussion, as I am sure the club would attest.

Mr Kaine also made the point in his speech that he believes if members had been fully aware of the consequences of rejecting the variation they would not have done so. Well, I disagree with Mr Kaine on that, and the reason I do that is that it is made very clear in the report of the Standing Committee on Planning and Urban Services, which considered this issue last year and reported to the Assembly on it, and in the evidence presented to that committee, that the club had always asserted it believed it had the right to pursue a hotel/motel development.

The club asserted that. There was a public statement made by the club. I am sure Mr Rugendyke can attest to that—that that was an issue which was raised during the public hearings. The club, at the time, said it did not want to do that; it did not believe it to be the best option. The club asserted during that time that it wanted a draft variation to the Territory Plan because it believed residential was the best form of development.

So for Mr Kaine to come out now and say members were not aware of this option is simply a nonsense. It is a nonsense because the club itself asserted it in the lead-up to the Assembly's disallowance. It is a nonsense because it was put on the public record very clearly before. Nothing has changed.

What were the reasons why a majority of members in this place disallowed the draft variation? The reasons were twofold. First of all, they related to not allowing an organisation which had a concessional lease to make a windfall gain from converting that lease, through a variation to the Territory Plan, from restricted access recreation to residential. The club would have made a 25 per cent windfall gain on the improved value of the land resulting from that change—even though it had paid a minimal amount for its lease because it was granted as a concession for the purposes of running a golf club. This Assembly decided it was not going to allow that circumstance to occur, and that was the right decision.

What was the other reason that the Assembly rejected the proposal? I think you can find the other reason in the dissenting report that I appended to the majority report of the Planning and Urban Services Committee on this draft variation, and that related to the compromising of open space areas that the development would have resulted in.

The development was proposed to be placed on an unused fairway at the back, at the top of the Federal Golf Club. The golf club itself is an integral part of the open space network that connects the formal national capital open space area of Red Hill with the open space areas that move through Hughes down to Yarralumla Creek and the centre of the Woden Valley.

The golf course itself is an integral part of that open space network, and to permit a development at the very top of that area would create a physical obstruction in that area of open space from Red Hill reserve down to the bottom of the Woden Valley. That was very clearly detailed in my dissenting report, and indeed in many of the submissions made by members of the community on the issue. Those two reasons—windfall gain and loss of open space—were the two reasons that this Assembly endorsed in rejecting the draft variation. And, again, nothing has changed.

Mr Kaine asks this Assembly to say to the community, "We want you to make a decision between the option you hate a lot and the option you hate even more." That is what Mr Kaine is asking us to do today. It is not an acceptable proposition. Instead this Assembly should reassert its decision of last October and it should formally reject Mr Kaine's proposal and say instead that the club should be looking at other options in resolving its problems, rather than simply seek development.

Other options do exist, including entering into partnerships with other sporting bodies, or indeed with other licensed clubs—and a number of other sporting organisations in this town have done so over the past few years. Those are options. Another option would be to seek direct assistance from the government, and then the government would make a judgment about that. A further option, of course, is to simply pursue a commercial financing arrangement to address the infrastructure issues it has. All of those options are ones which the club should more seriously address.

In conclusion, I would like to say this: I am sure Mr Kaine's proposal today is well motivated. I know that Mr Kaine feels strongly on this issue. But I would have to say that the Federal Golf Club's presentation of a hotel/motel development could very easily be seen as simply a bluff to convince this Assembly to revisit residential development on the site. I do not think this Assembly should be bluffed.

MS CARNELL (Minister for Business, Tourism and the Arts) (11.55): Mr Speaker, I do not believe it is a bluff at all. I believe that if the Federal Golf Club is given no either choices there is no doubt that it will go down the path of a hotel/motel and convention centre. Interestingly, from a tourism perspective there is an identified gap in the market, and that is for a convention centre with accommodation attached in an area such as the Federal Golf Club area.

As we all know, many departments, federally and even in the ACT, regularly have what are colloquially called love-ins, or meetings where they want to get away for a period of time—a weekend or a night and a day—to look at future direction, policy, all sorts of things. There are actually very few places where you can do that outside of well used hotel venues in the ACT. So it actually has been identified as a project that has, in itself, real merit and potentially there would be very little trouble getting a private sector investment to build such a facility.

But if you are looking at a convention centre and hotel/motel facilities—and of course the other real benefit of a facility like that would be to use the golfing facilities as part of that whole approach—I am sure anybody could see that that has real opportunities. A convention centre produces a lot more cars than some units ever will. A convention centre and a hotel will produce significantly more activity on that site than units will ever produce.

I think that Mr Kaine's approach here is extremely sensible. It is something that should be supported. I do not believe that the Federal Golf Club is in any way putting up a proposal that it is not going to go ahead with. I believe it will. It is not its preferred position. It would prefer to go ahead with the proposal that is currently on the table. If it is given no other choice by this Assembly, I think that would be extraordinarily unfortunate for everybody involved.

It has a right to develop its land under the lease it currently has, and by taking the approach of knocking back Mr Kaine's position today we give it no choice but to pursue a proposal that will be significantly more disruptive than the one that is on the table at the moment. I believe that the Federal Golf Club has gone to every single length that it can to attempt to come up with something that is environmentally sensitive and that takes into account the concerns of the people in the area. I understand that it is willing to look at the issue of dams and so on, or outstanding issues.

If we take an approach that says, "You have no choice but a convention centre and hotel/motel complex," then it will be on our heads if it goes ahead, as it has every right to do, and produces something that is possibly less environmentally sound, more disruptive to the community in the area and, I have to say, less appropriate generally from a sustainability perspective for our city.

MS TUCKER (11.59): As members know, the Federal Golf Club originally proposed to build about 60 townhouses in the north-east corner of its land in order to fund improved water supply and irrigation facilities for the golf course. This proposal was contrary to the zoning of this land in the Territory Plan as restricted access recreation, and was also contrary to the club's lease, which allows the land to be used only as a golf course and for ancillary uses. The club therefore sought a variation to the Territory Plan to allow housing on this site, but this proposed variation was rejected by the Assembly last year.

Not prepared to accept this decision, the club has now proposed to build a hotel and conference centre on this site. The latest proposal I have seen included 140 serviced apartments. Many people would regard this as a worse proposal than the one for townhouses. However, the club seems to think that this proposal cannot be rejected by the Assembly because, the club thinks, it is consistent with the current zoning and lease of its land.

It is very worrying that the golf club appears to be attempting to blackmail the Assembly by threatening to put a worse type of development on this block in the hope that the Assembly will change its mind and allow a lesser form of development which it always wanted in the first place. I am sorry that Mr Kaine and, it appears, Ms Carnell have fallen for this plot by supporting or putting up this motion, because clearly this is an issue of what is appropriate and what is not, and to say that a community facility can be used in this way and that we can be blackmailed in that way is a terrible indictment of how planning and this Assembly are prepared to operate.

The Greens' view is that there should not be any development in the north-eastern part of the golf course that has been targeted by the club. The Greens are opposed to development in this area because, from a planning perspective, this location is inappropriate for housing or apartments. This land was never meant to be a housing area and the development would become an isolated enclave that is relatively remote from services and has poor road access and would not be able to be served by public transport.

Surely if we are supposed to be moving towards a more ecologically sustainable city we should not be setting up housing situations within the city where owning a car for transport virtually becomes an obligation. This development will also create a barrier to the movement of wildlife and recreational users between the nature park on Red Hill and the rest of the golf course reserve. Under the Federal Golf Club's lease, the club is required to permit free public access through the course, which this development will compromise.

While the golf course is not part of the Red Hill nature reserve, it is geographically integrated with the reserves and connects this reserve with parkland and urban open space in Hughes and Garran. Canberra's planning has a tradition of concentrating its urban development in distinct suburbs and towns which are integrated with the open space running around and through the urban area.

The open space around Canberra is not all pristine bushland, but it does serve a useful aesthetic and recreational function for residents, and not just an ecological function. It is therefore a poor argument to say that just because this part of the golf course is degraded it does not need to stay as open space. It also ignores the fact that degraded areas can be rehabilitated.

It is true, however, that the current zoning of the golf course as restricted access recreation would allow a hotel, motel or guesthouse where they are ancillary to the predominant recreational use of the land. But I seriously doubt that the development of 140 serviced apartments in a boutique hotel, which I read in one of the club's documents, could be accepted as being consistent with the use of the site as a golf course.

Is the club expecting us to believe that all occupants of the apartments will be staying there only because they want to play golf? Is the golf club intending to put a requirement on visitors to the club that they must own golf clubs? It just appears that the golf club is continuing to pursue a speculative development opportunity to raise funds for its irrigation upgrade rather than asking the users of the golf course to pay.

It is true that the club could just put in a development application for these serviced apartments tomorrow and have it considered by PALM without the Assembly being involved, but I have no doubt that residents will challenge this development application by every means possible under the land act, and there is no guarantee that the club would be successful. By passing this motion the Assembly would be effectively endorsing the club's earlier proposal for townhouse development, whereas what I think the Assembly should be doing is indicating to the club that it does not want this land developed.

I believe that funding for the golf course's new water supply system should come from the users of the golf course rather than be subsidised by the ACT community as a whole through the loss of the public benefit associated with this open space. By its nature, the sport of golf has a significant impact on the environment relative to other sports due to the large area of land it takes up and the need for high levels of watering and horticultural maintenance.

It should be the responsibility of the club itself to reduce the environmental impacts of its own activities. I am happy to support the club's effort to reduce its water use and set up water recycling systems, but I still believe that this should be at the club's expense, not the community's. If the government wants to directly assist the club in this endeavour, then it should do so in a direct and transparent way, as it does with other sporting clubs and taking account of other competing priorities for government assistance.

The Assembly should not be assisting the club by allowing it to make a windfall profit on this development, which I believe the majority of people in the area do not want and which goes against good planning principles.

MR MOORE (Minister for Health, Housing and Community Care) (12:05): I am pleased to have the opportunity to speak after listening to the debate by a number of other members. But the debate is not new. Certainly one of the things that have been important is the choice that needs to be made here, and I think it has made succinctly; there is no choice, as Ms Tucker points out, to have no development on that particular site, as I see it. That may indeed work out to be the case. That is not what has been put by Mr Kaine here today and it is certainly not what has been put to me by the club, which suggests that it is determined to proceed with an as of right development in terms of a motel/conference-style complex associated with its lease.

I heard Mr Corbell's suggestion that they actually do not have that role. Well, that is a matter to be resolved by the proper processes and probably within the AAT, and Mr Corbell referred to that. But to suggest that therefore there is some kind of blackmail, as Ms Tucker did, I think is a somewhat strong representation of what is going on here. I did meet with the Hughes Residents Association, at its request, and considered this matter. It seemed to me that they basically had the choice between what they consider the worst situation and what they consider a little less worse situation.

The meeting was only earlier this week. Their view on this was that they believe they would prefer to allow the club to proceed with the development of its lease an as of right development. I indicated to them, and I indicate in this house, that, where somebody does have the right to develop on their lease, I will work vigorously to defend their right to do that, because that is part of the protection of the leasehold system. When somebody has a prerogative to do something within their lease conditions and the proper process has said, "Yes, that is your right" or "No, that's not," then I think we should support that, because those of us who argue that we should support the leasehold system have to also support somebody's right to that development.

So, that having been said, I intend to oppose Mr Kaine's motion because I think that the people most affected within the community say no, this is not what they want. I should indicate that I actually think they are wrong, and I indicated this to them. I think that the result they will have is a motel complex/conference centre along those lines, but that is the choice they are making, and have made as far as I am concerned, in this particular process.

It is not a choice about doing nothing. I believe that choice is not there. And, in saying that, I also say this: should the residents there say, "Whoops, we've got it wrong," as I think they did, or have a much broader meeting where other residents override what I am being told by the executive of the Hughes Residents Association, then I would either ask Mr Kaine to bring the motion back on or come back and revisit it. I am actually prepared to revisit it, but at this stage I will oppose it.

MR SMYTH (Minister for Urban Services) (12:09): Mr Speaker, the government has always said that we thought this development should go ahead. We voted last time in favour of it and unfortunately it went down. The question that now comes is: what is the Federal Golf Club allowed to do with its lease and the land that it has under that lease? It has now put forward a proposal that says that under the ancillary use provision it would like to build a motel and attendant conference facilities. That is its right.

Mr Kaine, in putting forward his motion, is saying that perhaps we as the Assembly should consider whether that is the best outcome—whether the impact of some 50 or 60 units is a lesser impact and that should be considered, or whether we allow the Federal Golf Club to do what it reasonably believes it can do under its lease. That is the decision for us today.

As Ms Carnell has pointed out, we actually do have a gap in the tourist market that could be accommodated by such a facility. And, if the Federal Golf Club wanted to go ahead and exercise its right under its lease to develop that facility, it would be able to.

The question really is: what is the best outcome here? I think what Mr Kaine seeks to achieve in the motion that he has put forward is a better outcome for everyone who is involved.

As Ms Carnell pointed out, if you have a conference-cum-motel facility there it will generate far more traffic than residential activity. The comings and goings, the conferences, the visitors that will come and use such facilities, and the taxis that will deliver people there all have the potential to generate far more activity.

So what Mr Kaine seeks to do is get the government to bring back the proposed draft variation 94. Whilst the government is supportive of the intent of proposed variation 94, I am advised that it would not actually be possible under the land act to simply recommit that variation. If the Assembly today was to vote in favour of the motion, I would direct the planning authority to review the Territory Plan as it relates to section 56, Block 1, Red Hill to provide for the proposals included in the draft variation in Territory Plan variation No 4.

Unfortunately, when proposed variation 94 was disallowed, that variation, in effect, ceases to exist—it is no longer, and the advice I have is that it cannot be recommitted. What we can do, of course, is put forward the same variation by recommencing the process, but it would come forward as a different variation number and it must then follow the process that is outlined in the act.

What this Assembly can do today is tell the government whether it should follow that process or whether we follow that process for it to fail.

If the Assembly votes in favour of Mr Kaine's motion, the land act does provide for PALM to prepare variations to the Territory Plan. We all know that. But the act does not prevent the authority from considering a new variation that is the same or similar to one which has already been prepared. However, that can be done only in accordance with the process set out in the land act, so it recommences the process. As all of us in this place know, that is a minimum of six months, and on some of the more contentious issues it is somewhat longer.

It could be done somewhat quickly, in that I am sure that the views for and the views against would be very much what we have already heard. With that in mind, it may be somewhat shorter, but PALM, as the authority, is required to carry out the full notification and consultation processes outlined in the act. That means the new draft variation would be need to be prepared, it would need to be released for public consultation, and then it would need to be referred to the Standing Committee on Planning and Urban Services before it could be tabled in this place.

So I guess if the view of the Assembly today was that this process should be recommenced—and the government would do it only if that was the view of the Assembly today—the golf club would have to consider those time frames. PALM, as the planning authority, would need to consider what was passed today in responding to any executive direction, and then it would decide whether or not to prepare the new draft variation for release.

The section to which Mr Kaine's motion applies is "Executive Policy Directions", which says that the executive or the minister may give the authority. I will be interested in seeing the outcome of the vote. Clearly, the vote last year said, "No, don't let it proceed." But we in the government have always believed that we should be working towards supporting the club in its endeavours.

I think Mr Corbell raised the issue of "Well, they can just get a loan" or whatever. I understand the club has done all that work—that it has looked at the options open to it to raise the sort of money it needs to secure the future of the club in the long term. That club provides wonderful facilities to those that are members and use the club. And we ought to be looking constructively at ways of supporting the club.

To simply say, "Go and get a loan" and to be dismissive of the work that the club has done, and the vast amount of money that the club has actually put into the progress that it has made on this, I think is unfortunate.

So we end up with really two proposals on the table here today: through Mr Kaine, the ability to bring forward a draft variation which would allow the original concept of some 50 or 60 townhouses on a disused fairway; or, as the club has prepared—and I understand it has had a preliminary meeting with PALM to discuss the progress of its application—an application to develop a hotel-cum-convention centre on the site, which is obviously the path it will take if it is not able to achieve its first outcome.

It is a dilemma, and it is not a dilemma that will be solved easily, I suspect. But it is a dilemma that this Assembly can give some guidance on. It is not enough to say, as Mr Corbell did, "We are presented with a worst choice and a less worse choice." The club has done the work here. The club has done a lot of work here. It is aware of all of the issues of how the land is affected. And indeed, in its original offer, once the townhouses were built it was to cede some of the property back for the benefit of all territorians.

The dilemma for us is to make sure that we get it right. The government did support variation 94 last year. The government will be supporting Mr Kaine's motion today, because we actually believe that is a lesser impact and a better use. Should this motion go down, the club is, of course, free under its lease, and under the laws that govern planning in the ACT, to put forward a DA to allow it to exercise what is already included in its lease. And all the people here need today to take that into consideration.

Mr Speaker, the government supports the motion. We supported proposed variation 94. I commend the motion to the house.

MR KAINE (12.17), in reply: Mr Speaker, before we vote on this matter, I just want to address some of the issues raised by Mr Corbell and Ms Tucker in opposition to the motion, because I fear that much of their opposition seems to be based on some sort of conjecture rather than fact. And I think that we need to be clear, if we are going to vote on this issue, that we are dealing with facts and not conjecture.

There seems almost to be an element in the debate of saying to this golf club, "We will allow you to do nothing. It doesn't matter what proposal you come up with; we will block it"—we will find every possible objection to it doing what in fact it is entitled to

do on its lease. I just do not understand the attitude that says no to everything that it comes up with.

I wonder what sort of proposal the club might come up with that Mr Corbell and Ms Tucker would find acceptable. They have given no indication that they would find anything acceptable. Now, that is a sort of a dog-in-the-manger attitude that I find rather odd.

In terms of my feeling that there is a lot of conjecture in this debate, Mr Corbell raised the rhetorical question: how sure are we that the hotel development will proceed? It was akin to Ms Tucker saying, "They've only put this forward as blackmail to force us back to the original proposal as a better alternative." Personally, Mr Speaker, I do not attribute those sorts of motives to the members of the board of the golf club. That assumes that these are devious people who seek some sort of gain that they are not entitled to, and that they are blackmailing or trying to force us by some unusual method to go back to the original proposal.

First of all, if Mr Corbell or Ms Tucker think that the hotel/conference centre proposal will not go forward if that is the only option available to the club, I think they will lose on the bluff if they call it.

My understanding is that the club has already spent a considerable sum of money on developing this proposal. It did not do that lightly. It has had a pre-application meeting with the land planning managers to identify any problems that might emerge so that it can go away and address them. And, incidentally, despite the lapse of time since this project has been declared publicly by the Federal Golf Club, at no time has PALM said, "You may not proceed as of right under your lease."

If PALM believed that there is no right, why has it not said so? Why has it not stopped the club cold in its tracks by saying, "This is not permissible." It has not done so because it is permissible, and the club is quite within its rights to go ahead. And if Mr Corbell or Ms Tucker think that this is just some bluff, then I can assure them they are wrong.

The club is entitled to do what it has proposed to do. It has a necessity for it, because it needs the money to do essential work on the club, and it will go ahead, I am absolutely confident, regardless of the outcome of this debate today. Most of those same opponents talked about this windfall gain. It is not a windfall gain. It is a club using the resources available to it, which it is entitled to do, to raise money to do essential work. It is like saying, "You can't do anything on your own property because it's a windfall gain"—in your own house; it is the same thing.

These people have a lease. They have got a business operating there—or a club, whatever you like to call it—and they are entitled to use the asset to advance their activities. It is not a windfall gain at all, and they have already said that they are not going to use this money to build a Taj Mahal golf club; they are going to use it to improve the facilities so that the viability of the golf club and the golf course in the future is guaranteed. Where is the windfall gain in that?

In connection with the windfall gain, Ms Tucker said that if they were putting forward a proposal on a commercial basis she would find that okay. This is a commercial proposal. They have got to find the money to build this facility—this hotel with a convention centre and all of the associated things—and they are doing it in the expectation that they will derive a gain from it that they can use to develop their club. It is a commercial venture. If Ms Tucker says this is not a commercial venture, I would like her to define for me in what way it fails the test of commerciality, because I cannot see it.

So there seems to be a little bit of an element of bad faith here, attributing bad motives to the directors of the club, which I do not do, and some suggestion that they are playing a game—that they are trying to bluff us into doing something. I do not believe that is the case. I believe that they are deadly serious in what they are proposing, and that it will go ahead. I do not believe there is an element of a windfall gain in it at all.

In conclusion, Mr Speaker, I will say what I have already said: I believe that this alternative proposal will be grossly intrusive, it is out of character with the rest of the development in the area, and the footprint will be much greater than the residential development's would have been. It will be more exclusive, in that it will not allow the freedom for people to move freely through there to the same extent as the residential development would. It involves the retention by the club of 9.2 hectares of land which would otherwise revert to the community. That in itself is a very significant loss in allowing this second proposal to go forward. And, of course, it will result in the loss of any potential betterment tax.

In my view, it would be a bad decision to allow it to proceed, and that is the reason why I brought this forward—not to support the club in some devious approach to gain something. I brought forward the proposal to bring the variation back because I believe it is in the public interest to do so. And it is contrary to the public interest to allow the variation to lapse and to allow the club to go ahead with this less preferable proposal, which it is perfectly entitled to do.

So I would urge Mr Corbell and Ms Tucker to perhaps think a little more logically about what we are discussing here today, take the case on its merits and look at it from the viewpoint that I have, and look at my motives in bringing the thing forward in the first place—or are they going to accuse me of acting in bad faith in putting it forward? I am not sure. If they look at it honestly and sincerely, I think they have to come to the conclusion that the best option is to bring the variation back and reconsider it. I urge members to do so.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Sitting suspended from 12.25 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Hospital Waiting Lists

MR STANHOPE: My question is directed to the Minister for Health, Housing and Community Care. At the Estimates Committee hearings early this month the minister and his officials revealed that although Canberra and Calvary hospitals had won tenders for additional surgery designed to attack unacceptably long elective surgery waiting lists, contracts had still not been signed with all hospitals. Can the minister say whether the unsigned contracts have been signed? If not, why not? Can the minister say how many patients on the waiting lists took up his offer to fund travel to Sydney or to other hospitals outside the ACT to have operations undertaken?

MR MOORE: Thank you for the question, Mr Stanhope. I will answer the last part first. I have flagged the possibility of operations being done in Sydney. No specific offers have been made that I am aware of. I have flagged that I am prepared to do that.

With regard to the specific question about where we are at with those contracts, this morning I signed off a reply to the Estimates Committee which examined this, and that will go through. I don't recall whether we were specific about whether contracts have been signed or not, so I will take that on notice and come back to you.

MR STANHOPE: Thank you. Can the minister confirm that Canberra Hospital removed long-wait category 2 patients from its waiting lists in anticipation that these patients would be booked by other hospitals that won the tenders, with the consequence that the latest published waiting lists do not reflect the true position? What has been the impact of the delays in completing contracts? Can the minister confirm that in fact the delays have seen patients waiting even longer, while Canberra Hospital is booking patients who have joined the waiting lists much more recently?

MR MOORE: No. We focused specifically on the long-wait patients. I understand they were originally taken off the waiting lists. Those that were not able to be done have been put back on the waiting lists. Some negotiation went on between Calvary Hospital and

Canberra Hospital. That was facilitated by the Department of Health, Housing and Community Care to ensure that we were able to resolve that.

Mr Stanhope, I will take particular care to look at those waiting lists and make sure that the information is accurate. I will ensure, before we table them, that no person who is still waiting is lost off those lists because they have been shuffled from one spot to another.

Waldorf Apartments

MR QUINLAN: My question is to the Minister for Business, Tourism and the Arts. The Waldorf Apartments were given concessional treatment based on the policy of bringing people to reside in Civic. I recently stayed at the Waldorf Apartments as part of a CPA conference. I do not know who else has stayed there. It looks very much like it operates as a hotel. Do you know how many permanent residents now live there? Was there any agreement or control to ensure that the taxpayers revenue forgone has achieved its stated aims of bringing people to live in Civic?

MS CARNELL: I don't know exactly how many people live there but the basis of the Waldorf is strata title. Individual people own individual units. Then they make a decision on whether they live there or whether they allow the unit to be let out, either on a long-term basis or a short-term basis.

The ACT government's policy, without doubt, has worked. Remember what it used to look like over the other side of the street? We had empty third-rate office buildings. We now have a very good facility available for both long-term and short-term residents, an area that looks absolutely great in comparison to the old pre-refurbishment days. The new youth hostel is absolutely wonderful. It brings life back into the Civic area. People have a right to decide on whether they live in their units or they rent them.

MR QUINLAN: I ask a supplementary question. As an aside, I might say that the developments sent a couple of sound businesses broke because of lack of control. Will you confirm that you had no agreement as to the number of permanent residents and that we have set up virtually a discount hotel?

MS CARNELL: I am absolutely fascinated that the Labor Party would contemplate a requirement that people undertake to live in a unit they buy. Surely people who buy units have a right to decide how they use them. I find any approach that dictates what people do with their own properties absolutely amazing. If those opposite think untenanted third-rate office space is better than the Waldorf, heaven help us if they ever get into government.

Relocation of Streetlight

MR KAINE: Mr Speaker, I seek your indulgence. After having looked at the Administrative Arrangements, I am not too sure to whom I should address this question, the Treasurer or the Minister for Urban Services. I will take a punt and address it to the Treasurer. He can pass it on to the Minister for Urban Services if he has to.

My question has to do with policy or guidelines relating to the siting and replacement of streetlights by ActewAGL. It may be an Urban Services matter and not an ActewAGL matter. My question is a very specific one. What was the reason for moving a particular streetlight in Quiros Street, Red Hill recently? Given that there appears to be no good reason for that move, what did it cost to move that light?

MR SMYTH: I think that question falls within the bounds of my portfolio. I will have to take the question on notice and get an answer for Mr Kaine.

Urban Infill

MR CORBELL: My question is to the Minister for Urban Services. It relates to the ACT land stock assessment. Minister, if there was no intention to identify urban open space as potential areas for urban infill, can you explain why the then Department of Treasury and Infrastructure dedicated considerable resources, and used resources across the ACT government, to assess blocks classified as urban open space for possible urban infill, including assessments obtained from your own department relating to soil contamination and heritage constraints on sites?

MR SMYTH: Mr Corbell knows that what he has just said is incorrect, because for many months now he has been quoting the first paragraph of the *Residential, Commercial and Community Land Releases in the ACT* document, which says:

> The Department of Treasury and Infrastructure is currently undertaking a review … to identify additional infill opportunities across Canberra.

It is the same old story.

Mr Stanhope: I take a point of order, Mr Speaker. This is the same answer as the minister gave to every question that was asked yesterday. In his determination to refuse to answer any questions in relation to infill, because he has been taken out of the picture by the Chief Minister on this issue, he rattles off the same paragraph of the document. He is wilfully refusing to answer any questions in relation to this subject.

MR SPEAKER: There is no point of order. The minister may answer the question as he thinks fit. If the answers to a series of questions is the same, I cannot control that. The minister obviously knows what he is talking about.

MR SMYTH: Mr Corbell asks what was the intention of the land stock assessment. It is outlined here quite clearly.

Mr Corbell: On a point of order, Mr Speaker: I did not ask that. What I asked was: if there was no intention to identify urban open space as infill—which is the commitment given by the Treasurer last Saturday week—why did the Department of Treasury and Infrastructure dedicate considerable resources and use resources across the ACT government, including from Mr Smyth's own department, to assess urban open space for heritage and soil contamination constraints as part of identifying those sites for urban infill? If there was no intention to do it, why did they do it?

MR SPEAKER: Thank you.

MR SMYTH: Mr Corbell again has not understood what the Chief Minister said. The Chief Minister's commitment at that meeting some weeks ago was that we would not use designated urban open space for infill, except with the conditions that we were looking at the sites at both Yarralumla and Griffith. The land release document quite clearly says, "Here is the land stock assessment, this is what we are going to do."

Mr Berry: Mr Speaker, I raise a point of order.

MR SPEAKER: Sit down.

Mr Berry: No, Mr Speaker, I will not sit down. I am entitled to raise a point of order.

MR SPEAKER: What is your point of order then?

Mr Berry: Mr Speaker, I draw your attention to standing order 118 (a), which says that answers to questions "shall be concise and confined to the subject matter of the question". I draw your attention to the question. The question was: can the minister advise why the then Department of Treasury and Infrastructure dedicated considerable resources, and used resources across the ACT government, to assess blocks classified as urban open space? Will you answer the question, minister?

MR SPEAKER: I see that you all seem to have the same question, but never mind.

Mr Moore: On the point of order, Mr Speaker, since Mr Berry raised the point of order: if he had looked on a little bit further he would have seen that standing order 117 (h) says, "A question fully answered cannot be renewed." I think that one is being tested.

Mr Corbell: On that point of order, Mr Speaker: I have already asked that question. Why did you not rule it out of order? You didn't.

MR SPEAKER: Order! I have yet to check yesterday's *Hansard*. If I find it is similar, he will be withdrawing it, but I will allow the minister to continue.

MR SMYTH: The purpose and intent of the work I am carrying out are clearly outlined in this document, which Mr Corbell has because he continually quotes the first paragraph. Once the assessment of all unleased territory land is carried out, then the assessments will take account of statutory planning requirements and planning requirements and planning objectives that protect and maintain appropriate levels of recreation and open space for the community. It is part of the process.

Through that process, the Chief Minister has given a commitment, and that commitment is that we will not use designated urban open space.

Mr Corbell: You're not lying to people again, are you, Brendan?

Mr Stefaniak: On a point of order, Mr Speaker—

Mr Corbell: I withdraw the comment, Mr Speaker.

Mr Berry: Fair comment, though.

Mr Moore: Mr Speaker, I raise a point of order. As Mr Corbell withdrew, Mr Berry said, "However, it was a fair comment." The implication is very clear—that it is a lie. He needs to withdraw that.

Mr Berry: I am so sorry; I withdraw.

Mr Corbell: Mr Speaker, I have a supplementary question.

MR SPEAKER: Just a moment. I have to sort this out, and then Mr Corbell might have a supplementary question. Oh, are you withdrawing?

Mr Moore: He has withdrawn it, Mr Speaker.

MR CORBELL: I ask the minister a supplementary question. If there was no intention to examine urban open space areas for possible infill, I ask the minister whether he can explain why correspondence from his own department, dated 26 May this year, to the then Infrastructure and Asset Management area of the Department of Treasury and Infrastructure said:

> Attached is the result of our field inspections of the blocks identified by IAM for possible sale for residential or other purposes.

If there was no intention to examine sites, why were you doing the assessment of urban open space for residential development?

MR SMYTH: I am not sure of the context in which Mr Corbell uses that document. I will check the document and get back to him. But, yet again, Mr Corbell goes out and says that the government has got a secret plan. There it is, Mr Speaker. There is the secret plan. We publish our secret plans.

Then we give it to the Labor Party so they can know about our secret plans. Then, what Mr Corbell does is release to the public half of the answer and he purports that is what the government is going to do. He got a second document that outlined that the process was not finished and yet again what we have from Mr Corbell is the twisting and the turning that we always get from the Labor Party.

Mr Berry: Mr Speaker, on a point of order: the minister has said that he has to take this on notice. You ought to just sit him down.

MR SPEAKER: I call Mr Hird.

Jerrabomberra Valley

MR HIRD: Thank you, Mr Speaker. My question is to the Minister for Urban Services, Mr Smyth. I refer to media reports on 2 November that the government has ruled out developing a town in the Jerrabomberra Valley. Can the minister advise the parliament whether the government will proceed to plan the development of this valley.

MR SMYTH: I thank Mr Hird for his question. This matter is very important because the accusation is often made that this government does not engage in long-term planning. The fact that we can determine that a block of land that possibly would have been used for a new town some 30 years from now is no longer appropriate does say that this government has a long-term vision of where it will take this city and this territory.

This government is widely recognised as the most environmentally responsible government in Australia. This is based on our record for things like our No Waste by 2010 strategy and our record on developing and implementing a greenhouse strategy. It is recognised world wide that urban sprawl is now a major environmental problem. Indeed, the whole question of urban sprawl was raised at a recent conference attended by the OECD.

Urban sprawl is now a particular problem in Canberra. Since 1960 our population has increased sixfold. Since the 1960s the space occupied by the Canberra metropolitan area has increased 12 times. As a result of urban sprawl we have reduced the habitats of endangered species and we have used up more resources than a city of our size really should. In addition, this urban sprawl has reduced the viability of services such as schools and shops to existing suburbs and greatly increased the cost of providing services to Canberrans. I think it will now be acknowledged that the government has had the courage to stand up against urban sprawl.

The Jerrabomberra Valley has long been identified as a future area to be developed when the current town centres had grown to peak capacity. In 20 years time the Jerrabomberra Valley would have provided a new town that would have been built up to the size of Western Creek. But in recent years, through the action plans that this government has put in place—and I believe that we are the first government to complete all of our action plans on endangered species—there has been concern over the presence of native temperate grassland habitat in that area. The habitat includes endangered species such as the eastern lined earless dragon, the striped legless lizard and the golden sun moth. In addition, areas of yellow box/red gum grassy woodland endangered communities have now been identified.

A scoping study reviewed the development potential of the Jerrabomberra Valley and found that the area is not suitable for standard suburban residential development because of its environmental importance. As a result, development of a new town at Jerrabomberra will not proceed. We will reserve substantial areas of the Jerrabomberra Valley to protect these threatened species and the habitat in which they live. These areas will not be available for development. However, some of the remainder of the valley which does not have a high environmental value is still suitable for meeting important commercial and community land needs as well as some alternate residential options.

Some development would be possible through the normal planning processes that will be consistent with the environmental action plans. In these areas the types of uses could include broadacre institutional, industrial and commercial activities, telecommunication activities and aviation facilities, some tourist facilities and low impact agriculture such as grazing.

The ACT government's long-term strategic direction is for the continuing development of Gungahlin, West Belconnen and the remaining parts of southern Tuggeranong as well as the ability to maximise the opportunities for residential development in the established town centres and to encourage development and business growth in those town centres. This approach ensures that infrastructure in these established areas is used to its fullest potential and is far better for the environment and for community renewal. It also reduces urban sprawl, which should be a priority issue for all of us.

Urban Open Space

MR HARGREAVES: My question is also to the Minister for Urban Services. Minister, the Tuggeranong lakeshore master plan released by your department in August 1999 includes the following explicit statement about block 23 section 230, an area of urban open space:

> This site, while presently identified by the Territory Plan as Urban Open Space ... is relatively well screened from Drakeford Drive and could in the longer term accommodate low scale residential development in its eastern half.

The Belconnen Town Centre master plan also includes a map that highlights land currently designated as urban open space at Lake Ginninderra as being considered for residential development. How do those documents produced by your department accord with the Chief Minister's commitment not to develop areas designated as urban open space?

MR SMYTH: Mr Speaker, the process on the Lake Tuggeranong master plan commenced some years ago. There has been a large amount of consultation on it. It has been before the Standing Committee on Planning and Urban Services for some time and I hope that we will have its report shortly. In the interim the Chief Minister, on behalf of the government, has made the pronouncement that designated urban open space will not be used. That will not go ahead now.

MR HARGREAVES: I have a supplementary question. I thank the minister for the assurance that urban open space will not be used for residential development; at least, that is what I thought it was. Minister, given that you said just a couple of seconds ago that Gungahlin, West Belconnen, another part of Belconnen and southern Tuggeranong were the only areas that you were going to address for urban infill and given the Chief Minister's commitment not to develop urban open space, will you now direct your department to withdraw the Lake Tuggeranong master plan and the Belconnen Town Centre master plan from public comment?

MR SMYTH: Yet again, the Labor Party when it suits them wants to throw the process out the window. That is what they do all the time. The process is that this Assembly—

Mr Corbell: Are you going to do it or not? Does it have status or doesn't it? What a shambles you are in over there, an absolute shambles.

MR SPEAKER: You have a short memory, Mr Corbell.

MR SMYTH: Yet again, Mr Speaker, when it does not suit them the Labor Party are willing to throw the process out the window. The Assembly referred the Lake Ginninderra master plan to the committee and it is appropriate for the government to wait for the committee's report. While that consideration is being undertaken, the government has changed one of its policies and the Chief Minister has stated that designated urban open space now will not be developed. When we get the report back from the committee, that will be taken into consideration.

The Belconnen Town Centre master plan is a draft plan. It is out there for consideration. When the plan is returned to the government it will be considered in light of the government's policy. It is curious, Mr Speaker, that the Labor Party is the one which, through Bill Wood as its planning minister, actually bought Tuggeranong Homestead as a residential development site. It is a part of the open space that Tuggeranong residents value.

Mr Corbell: I rise to a point of order, Mr Speaker. I would like the minister to tell the Assembly where Tuggeranong Homestead was mentioned by Mr Hargreaves in his question.

Mr Humphries: I rise to speak to the point of order, Mr Speaker. It is a well-established principle of question time that, in answering a question a member has asked, a minister can give examples or make reference to other issues that are related to it. The minister was asked a question about Tuggeranong and he is answering a question about Tuggeranong.

It is entirely appropriate that those two things be connected. Mr Speaker, we have had a succession of points of order from members opposite. It is very difficult for ministers to be able to answer questions with that kind of interjection and repetitive points of order being taken the whole time. I ask you to rule that those sorts of things are not in order.

MR SPEAKER: There is no point of order.

MR SMYTH: You can always tell when it stings because they always jump and they claim relevance. Those opposite, through Mr Wood, as planning minister—we see now that it was just a stunt by Mr Corbell in the lead-up to their preselection to discredit Mr Wood—were going to put residential on the Tuggeranong Homestead site. This government has said that we will not.

Members interjecting—

MR SMYTH: This government has said that we will see it return to the urban open space and protect it into the future.

Mr Wood: You are proposing to put hotels on it.

MR SPEAKER: I am getting very tired of these constant points of order.

Mr Wood: We are getting rubbish from over there.

MR SPEAKER: I don't care what your interpretation of it is. The minister is answering the question.

Mr Wood: No, he is not. He is distorting it.

MR SPEAKER: He is entitled to answer it without constant interruptions and points of order. Please bear in mind that frivolous points of order can be dealt with too.

Mr Berry: There is nothing frivolous about this, Mr Speaker. This is an abuse of standing orders that I am talking about and I would have thought you would have given it more regard than to describe my attempts to make sure that they are adhered to as frivolous. Mr Speaker, I understand a bit of flexibility when it comes to standing order 118 (a), but this minister has abused it to a degree where he ought to be sat down for not answering the question. He has had plenty of opportunity to answer the question and he has declined to do so.

MR SPEAKER: There is no point of order. Resume your set.

Mr Berry: References to what Mr Wood may or may not have done have nothing at all to do with the question that was asked.

MR SPEAKER: Resume your seat. I think Mr Humphries—

Mr Moore: Mr Speaker, considering the fact that Mr Berry raises this same point of order again and again and that you rule exactly the same way again, would you look at the range of sanctions under standing order 202, where somebody persistently and wilfully obstructs the business of the house, refuses to conform and wilfully disregards the authority of the chair? I think there is a point at which you have to say to Mr Berry, "Enough," and name him.

MR SPEAKER: I refer Mr Berry to 202 (a).

Mr Hargreaves: Mr Speaker, still on a point of order: in view of all of this, possibly the minister has forgotten what the question was. The question required just a yes or no answer. I am not interested in his reasons.

MR SPEAKER: Sit down. You may be interested in a yes or no answer. The minister can answer the question as he sees fit.

Mr Berry: Oh, no, he can't.

MR SPEAKER: Yes, he can.

MR SMYTH: Mr Speaker, I believe that I have answered the question.

Mr Wood: He must be to the point. You have to uphold the standing orders.

MR SMYTH: The answer, quite clearly, is that the process must be followed. Yet again the Labor Party wants to throw the process out the window and disavow what was done in the past. We already know that Mr Corbell wants to run away from what Mr Wood

said, but the classic example is Tuggeranong Homestead. They wanted to put residential on a block of open space. This government has said that that is unacceptable and we will add that back into the defined open space by protecting it, along with the 100 hectares of yellow box red gum that we will put back into the urban open space, and along with the land that was saved at the Gungahlin town centre when the former planning minister, now the Chief Minister, shifted a whole town centre because we understand the value of the environment and the value that the people of Canberra put on it. We have now added to that list the proposed Jerrabomberra town centre which now will not go ahead.

Schools Assessment Reporting

MS TUCKER: My question is to Mr Stefaniak as Minister for Education and it is in regard to the recent decision by the department of education to require schools to release to their communities their ACT assessment program results, including school and system averages, from 2001. After the receipt of 138 submissions and the results of a 500-strong random telephone survey of parents and carers, the minister has said that parents do not want leagues tables. In advising schools of the process to be followed, the department has said the school ACTAP results—that is, the results of literacy and numeracy testing—will not be published in a form that could be used to form league tables, and that schools will not use ACTAP data or comparisons with system results for marketing purposes.

However, with the release of information on the performance of schools against the system average, how did you resolve the concerns regarding parents shopping around for schools which have results well above the system mean; schools in one way or another promoting their performance against the average and therefore against other schools; schools with a student mix that produces numeracy and literacy results below the system average losing students to schools catering to a less diverse community; and the media publishing de facto leagues tables extracted from the information available? I can see that Mr Moore is trying to help you answer the question as well.

Mr Moore: I take a point of order. I believe the question is out of order, because Mr Berry has a motion on this matter on the notice paper.

MR SPEAKER: That has been drawn to my attention. It is difficult to make an assessment. Mr Berry certainly has the following motion on the notice paper:

> That this Assembly opposes the publication of "league tables" for ACT government schools.

Ms Tucker: May I speak to the point of order?

MR SPEAKER: Yes, you may.

Ms Tucker: Mr Stefaniak has said that the government does not support league tables, but they have produced a different form of information. My question to the minister is: how is that not going to be a problem?

MR SPEAKER: With that clarification, I will allow the question.

MR STEFANIAK: I will answer some of Ms Tucker's dot point questions first. They were about parents shopping around for schools, schools in one way or another promoting their performance and how you stop the media. I think it would be very difficult for the media to construct accurate league tables. Unlike some of the superficial league tables we see coming out of New South Wales, we have a very complex assessment structure. We have five strands in literacy and three strands in numeracy. For any one school for years 3 and 5 or years 7 and 9, you are going to have 16 or so different strands.

Parents do shop around schools at present, and schools, funnily enough, promote their performances in other ways. As you know, Ms Tucker—you are chair of the education committee—we have some excellent schools here. All of them have degrees of excellence in certain areas which impress some parents. That is why parent want their children to go to particular schools. A lot of parents take their children to schools out of their area; a lot take them to schools in their area. There is a lot of shopping around at present. I do not see how this is going to accentuate that.

Ms Tucker: I take a point of order. I am trying to be helpful. I do not think the minister has understood my question. He is not answering it. The question was: how did the minister resolve concerns around the use of this material? I listed the concerns. I am not interested in knowing whether or not people shop around. I am asking how you resolved this list of concerns.

MR STEFANIAK: Thank you, Ms Tucker. I do not know whether that is your supplementary question, but we will take it as such. We have had a lot of consultation. We invited people to make written comments, and there were 138 written submissions.

Ms Tucker: That was not the question.

MR STEFANIAK: Yes, it was. There was also a phone survey. We listened to the community. It is quite clear that the community do not want league tables published. That comes through quite clearly. However, a significant percentage of parents, some 76 per cent of those who participated in the phone survey, want to find out how their child goes against the system average, how their child goes against their class average and how their school performs against the system average. We listened to the community and have come out with a way of ensuring that individual school communities and parents have that information but that the necessary protections are in place so that the thing they do not want to see happen—the publication of meaningless league tables—does not occur.

MS TUCKER: I ask a supplementary question. How is this information different from that information that is produced in league tables? In other words, what are the protections that you say are in place to prevent this material from being used as league tables would be used?

MR STEFANIAK: For a start, Ms Tucker, they are not consolidated. They go to individual parents of individual schools. They do not compare school A with schools B, C, D and E, which is what a league table does. They are done in such a way that the necessary safeguards are made to protect students and so students cannot be identified, and I think that is something everyone absolutely agrees on.

I think the way it has panned out—the way the department has done it and the schools are doing it—is actually very good, because it means we are giving parents what they want, with the necessary safeguards.

Urban Open Space

MR BERRY: My question is directed to the Chief Minister. At the Civic protest rally on 18 November, you gave an assurance that all but two areas of urban open space—Griffith and the Yarralumla brickworks—would be saved from development under your administration. Can you advise whether all work relating to the possible development of those areas of open space other than Griffith and Yarralumla brickworks has ceased?

MR HUMPHRIES: I have made a very clear commitment about designated urban open space under the Territory Plan. I have discussed that with my colleague the Minister for Urban Services, who now has responsibility for both PALM and Asset Management, and I am confident that the understanding of what my position is, and the position that was articulated at that particular public meeting, have been communicated throughout the ACT government.

Mr Berry: So I take that as: "I don't know quite yet." You haven't checked.

MR SPEAKER: Take it as you wish. Just ask your supplementary question please.

MR BERRY: Will you check to make sure that the work has ceased? And, given your commitment, will you advise the Assembly of the cost of resources used in undertaking to this stage the study in relation to urban open space?

MR HUMPHRIES: I do not need to go and check what is going on. My position is very clear. The government's position is very clear. If Mr Berry wants to check, I am sure he can do that himself. As far as the cost is concerned, I do not care what cost has been incurred in the past in respect of this, because the government's position is absolutely clear. I could also ask the question of what cost has been incurred by the Labor Party when it was last in government preparing urban open space for development—

Mr Berry: It was that long ago I don't remember.

MR HUMPHRIES: Well, it would be a very large cost, I imagine. You had big plans, apparently, for urban open space when you were last in government. If you want to go back, the question is how far back do you want to go? I suspect not any further back than 1995.

Disability Funding

MR WOOD: There are a few urban myths flying around, which we might deal with another time, Mr Speaker. My question is addressed to Mr Moore, the Minister for Health, Housing and Community Care, and it relates to disability funding. Can he tell me whether it is the case that both the Commonwealth-State Disability Agreement and the bilateral agreement between the Commonwealth and the ACT exclude funding for the provision of services with a specialist clinical focus; for example, therapy services?

If that is so, would it be the case that, despite the ACT picking up some of the responsibility, the failure to obtain Commonwealth funding means that there are disabled people in the ACT whose quality of life suffers because funds for this purpose are consequently limited?

MR MOORE: I will take that question on notice, Mr Speaker.

MR WOOD: Mr Speaker, I raise a supplementary question. I understand there is probably a relationship with Mr Stefaniak's department somewhere too. When you answer, Mr Moore, could you give a comment on whether there has been any study of unmet need as part of any examination of this?

MR MOORE: Yes.

Needle Distribution Centres

MR RUGENDYKE: My question is addressed to the minister responsible for police, Mr Stefaniak. Minister, on Monday morning on ABC radio we heard the startling evidence from a luminary in the academic field whose PhD thesis has firmly cemented her credibility that drug dealers are going into needle distribution centres and collecting a hundred needles at a time for their clients. Has this academic reported this experience to police, and, if so, what action has been taken?

MR STEFANIAK: I do not know, Mr Rugendyke. I will take on notice the question of whether that academic has reported that to the police.

MR RUGENDYKE: I ask a supplementary question. How does the ACT government feel about subsidising drug dealers in this way?

MR STEFANIAK: Mr Rugendyke, I think the ACT government's record on drug dealers speaks for itself. I am delighted with the efforts made through intelligence policing to smash some very serious drug distribution rings. Hopefully you might have seen last week that a ring was smashed. With some excellent intelligence, police hit about three different sites in Canberra and a car on one of the Canberra streets. They took into custody a number of people and charged them with a number of offences in relation to drug dealing. As well as that, some $60,000 worth of heroin—about 4 ounces or, if my maths is correct, 250 grams, which is 125 times the trafficable quantity—was seized. Also, $50,000 in cash was seized. That was the result of very good police work.

The police are concentrating now on good intelligence policing and getting in there and smashing some of the more serious drug distribution rings that are now operating in our city. That is something that they will continue to do and they are certainly hopeful of smashing a few more rings in the near future.

I commend the men and women of the Australian Federal Police on their efforts to get stuck into the drug dealers. They mix intelligence policing with other steps such as observation and picking up drug dealers in the act of making drug deals. This is something that they are also doing pretty effectively. Recently they had a blitz and picked up quite a few people around Garema Place.

So it is a combination of intelligence-led policing to smash those big rings and picking up drug dealers when and where they can be located. I think the last bust that I mentioned has had a significant effect on the supply of heroin in our city.

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

Gambling and Racing Commission Website

MR HUMPHRIES: Mr Speaker, yesterday Ms Tucker asked for an explanation under standing order 118A about the non-answer of an earlier question taken on notice. I apologise to Ms Tucker for not having provided that answer earlier. I can indicate now the answer to her question. It was about a reference in an advertisement for applications for an interactive gaming licence to direct people towards Ernst & Young in Brisbane.

Mr Speaker, I can advise the Assembly that Ernst & Young was the successful tenderer in obtaining a contract for drawing up and developing the interactive gambling application assessment procedures and evaluating the interactive gambling proposals that were received under that process. The reference to contacting Ernst & Young in Brisbane is not a reference to people to do business with Ernst & Young so that they can help them, at a fee, to make their application. Rather it was to contact Ernst & Young to be able to obtain a generic performance document to assist the applicant with their application.

Ernst & Young, of course, cannot attract any business in that process because of a conflict of interest as they are all ready contracted to the ACT government to assist with the evaluation of those bids. It would be inappropriate for them to assist people to make a bid as well as to evaluate it. So the reference is only to obtain information from those people because they drew up the original documentation that provides for applications to be made for an interactive gambling licence.

Urban Infill

MR SMYTH: Mr Speaker, I have some more information in reply to the question that Mr Corbell asked earlier. Mr Corbell quoted from a document. He quoted the words "Attached is the result of our field inspections of the blocks identified by IAM for possible sale for residential or other purposes". What Mr Corbell failed to do was read the next paragraph which says:

> The blocks highlighted in green have stormwater drainage requirements or constraints. All blocks marked as being overland flowpaths, channels, floodways or retarding basins must be reserved for drainage purposes. The blocks marked having an underground pipe will require an easement over the pipe if it is considered suitable for sale.

What he failed to mention was that this was a letter dated 26 May 2000. Since then the Chief Minister made his statement saying that we will not be developing designated urban open space. Yet again, we heard just half the story from Mr Corbell, for his own purpose.

PERSONAL EXPLANATION

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

MR SPEAKER: Leave granted.

MR CORBELL: Thank you, Mr Speaker. First of all, the minister has just indicated that I failed to mention the date of the document I quoted from. That is incorrect. I can clarify that by simply reading the question again. It was a supplementary question and it read:

> If there was no intention to infill this land, can the minister explain why correspondence from his own department, dated 26 May 2000, to Infrastructure and Asset Management states …

So I did state the date. Further, Mr Speaker, yesterday in question time Mr Smyth levelled some allegations against me that I was misrepresenting the issue of broadacre land use at Curtin through a photograph taken and published in the *Canberra Times* on Monday of me standing under a large stand of trees—not very nice trees—with a resident of Curtin discussing a rally held to oppose development of the horse paddocks at Curtin.

Mr Speaker, the allegation from the government was that because I was standing on a piece of land that was urban open space, not the Curtin horse paddocks, I was misleading people. I would like to clarify to the Assembly that, unlike the government, which did not send anyone to speak at that rally, I did attend that rally. The rally was organised by a group of Curtin residents. I was invited to attend and the photograph was taken where the rally was held, an area immediately adjacent to the horse paddocks. I cannot control where a rally is held, but I am very happy to speak at one, unlike the government.

PRESENTATION OF PAPERS
Papers and Statement by Minister

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

> Remuneration Tribunal Act, pursuant to section 12—Determination No 68, together with a statement, for full-time holders of public offices, dated 20 September 2000.
>
> Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments –
>
> Long term contracts:
> Howard Ronaldson, dated 10 October 2000.
> James Coleborne, dated 21 November 2000.
> Roger Broughton, dated 21 November 2000.
> John Thwaite, dated 4 October 2000.
> Joanna Holt, dated 4 October 2000.
> Irene McKinnon, dated 7 September 2000.
> Bronwen Overton-Clarke, dated 3 October 2000.

Sue Marriage, dated 18 October 2000.
Ron Foster, dated 21 November 2000.
Temporary contracts:
Penny Gregory, dated 24 August 2000.
Anna Lennon, dated 4 October 2000.
Sandra Lambert, dated 6 September 2000.
Tu Pham, dated 4 October 2000.
Roger Broughton, dated 4 October 2000.
Susan Killion, dated 4 October 2000.
Gerry Cullen, dated 6 September 2000.
Geoff Hill, dated 8 September 2000.
Russell Baylis, dated 11 September 2000.
Kimberley Pierce, dated 10 October 2000.
Ron Foster, dated 21 November 2000.
Schedule D variation:
Penny Gregory, dated 4 October 2000.
Sandra Lambert, dated 2 November 2000.
Gordon Lowe, dated 10 October 2000.
Graeme Dowelle, dated 18 and 19 September 2000.
Allan Eggins, dated 30 October 2000.
Susan Killion, dated 4 October 2000.
Stephen Ryan, dated 11 September 2000.
Meredith Whitten, dated 4 October 2000.

Mr Speaker, I ask for leave to make a statement in relation to the contracts.

Leave granted.

MR HUMPHRIES: Mr Speaker, these documents are tabled in accordance with sections 31A and 79 of the Public Sector Management Act which require the tabling of all executive contracts and contract variations. Members will recall that the contracts were previously tabled on 6 September 2000. Today I present nine fixed term contracts, 11 temporary contracts and eight contract variations. Details of the contracts will be circulated to members. I would like to alert members once again to the issue of privacy of personal information which may be contained in the contracts, and I ask members to deal sensibly with the information and respect the privacy of individual executives.

PRESENTATION OF PAPERS
Papers and Statement by Minister

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

Territory Owned Corporations Act, pursuant to subsection 19 (3)—Statements of Corporate Intent for:
ACTTAB Limited for the period 1 July 2000 to 30 June 2001
Totalcare Industries Limited for the period 1 July 2000 to 30 June 2003.
Financial Management Act, pursuant to subsection 47 (3)—Approval of guarantee between the Australian Capital Territory and St George Bank Limited in relation to Canberra Cosmos Ltd, dated 16 October 2000.

I ask for leave to make a statement in relation to the guarantee in relation to Canberra Cosmos.

Leave granted.

MR HUMPHRIES: I thank members. This is a guarantee, not a loan or any other form of financial statement. The guarantee is for a further extension of an original guarantee for $200,000 provided to the Cosmos originally in October 1996. This guarantee will extend the guarantee until October 2002.

MANAGER OF GOVERNMENT BUSINESS AND GOVERNMENT WHIP
Statement by Minister

MR HUMPHRIES (Chief Minister, Minister for Community Affairs, Attorney-General and Treasurer): Mr Speaker, I will amplify the administrative arrangements that were announced yesterday in my absence by Mr Smyth. Mr Moore will be manager of government business and Mr Hird will continue in his role as government whip.

Mr Smyth: Mr Moore is leader of the house?

MR HUMPHRIES: That is right, Mr Speaker. He is leader of the house in effect.

DISABILITY SERVICES—APPOINTMENT OF BOARD OF INQUIRY

MR WOOD (3.19): Mr Speaker, I ask for leave to move a motion relating to the appointment of a board of inquiry into certain aspects of disability services.

Leave granted.

MR WOOD: This motion gives further emphasis to the absolute intention by the majority of members of this Assembly that there shall be an inquiry. Of that people should have no doubt. The majority of members are intent on an inquiry. Mr Rugendyke moved a bill this morning to propose an amendment, and if necessary we will deal with that next week. I do not think it should be necessary. I do not think this motion should be necessary today.

This is the same motion that was rejected by the government after it was moved in the last session. It has a different reporting date, because a month or so has passed since that time, and the words have been changed significantly. Instead of calling on the government, this motion directs the government to establish this inquiry.

Mr Moore: Just semantics.

MR WOOD: Yes, I think you are probably right, Mr Moore, but I think it shows the very clear intention, which might be carried further next week if necessary, with Mr Rugendyke's amendment. I thank the minister for convening yesterday a very well-attended round table with all the people who have some interest or knowledge in this area and—

Mr Moore: I was trying to find a compromise, and consult and work with people.

MR WOOD: I think you do not understand the intention of the Assembly. We heard again the concerns expressed from the office of the coroner. We heard the concerns of the minister and others. But the members present, with the support of other members in the Assembly, have the clear expectation that the inquiry we propose can proceed without causing trouble or interfering with the coroner's inquiry.

Mr Moore: That is crap. That is the opposite to what he said. You know that.

MR WOOD: Yes, I know what the coroner said and I know what we expect. We are confident that, as has happened in other places, it can proceed without causing disruption. This inquiry is wide ranging and in particular there is a very significant difference in the way that submissions will be received. There will be a very wide range of submissions to this inquiry from organisations and from individuals who would not normally be sent to a coroner's inquiry. That would not normally be the case.

We need that avenue for people to express their views. The person who should carry out the inquiry is experienced: he knows the law, he knows the circumstances. That experience will help make this a very sensible inquiry that does not intrude into the coroner's area. We heard those concerns, but I have the expectation that we can deal with this.

I would suggest to the government that they can set up this inquiry perhaps after their cabinet meeting on Monday. If you do not accept this motion then—as I was pleased to hear Mr Moore say—if Mr Rugendyke's amendment is carried, as I expect it would be, the inquiry would be established. On that basis, let's not lose another week, let's take it to cabinet on Monday and get it moving. It is going to happen, it is going to be a broad and sensible and proper inquiry that we all need.

MR SPEAKER: Would you mind formally moving the motion?

MR WOOD: I move the motion circulated in my name, concerning an inquiry into disability services:

> That this Assembly, noting the resolution of the Assembly of 18 October 2000 calling on the Government to appoint a Board of Inquiry pursuant to the *Inquiries Act 1991* into the services for people with a disability in residential care in the ACT within 21 days and the failure of the Government to appoint the Board:
> (1) directs the Government to appoint a Board of Inquiry, pursuant to the *Inquiries Act 1991* (the Act), within 21 days, to inquire, in a manner which recognises the limited capacity of some persons to participate and protects individual interests, into the services for people with a disability in residential care in the ACT and in particular to examine:
> (a) service quality, particularly the safety, dignity, wellbeing and development opportunities for people who reside in disability services provided or funded by the ACT Government (directly or indirectly) including, but not limited to:
> (i) the degree of compliance with legislative requirements and disability standards;
> (ii) the degree of participation by residents, families, carers, advocates and guardians in decisions affecting them or the persons for whom they care; and

(iii) the adequacy and effectiveness of staff selection and training;
(b) service monitoring and accountability, particularly the adequacy and effectiveness of mechanisms employed by the ACT Government to ensure the quality of services, compliance with legislation and the disability standards and their efficient and effective use of government funds;
(c) consumer protection, complaints and appeals, particularly the adequacy and effectiveness of consumer protection and complaints and appeals mechanisms external to individual services, including the Community and Health Services Complaints Commissioner, the Community Advocate and the Human Rights Office of the ACT;
(d) resource allocation, in particular the adequacy, equity and efficiency of the disability services funding allocation generally and, in particular:
(i) between government and non-government service providers,
(ii) between program administration costs and direct services, and
(iii) between permanent accommodation, respite and other disability services;
(2) recommends that the Government, in accordance with section 5 of the Act, appoints Professor Roger West to conduct the inquiry;
(3) recommends that the Government, in consultation with the Board of Inquiry, ensures that the Board of Inquiry be provided with the necessary staff and resources to effectively perform its functions; and
(4) recommends that the Government fixes 15 August 2001 as the date for submission of the report to the Chief Minister in accordance with section 14 of the Act.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs, Attorney-General and Treasurer) (3.24): Listening to what Mr Wood has said today could lead you to believe that the government has heard the debate going on about an inquiry under the Inquiries Act into disability services in the territory, and has been doing other, more important things in the last few weeks, since that motion was first put to the Assembly successfully on 18 October.

Nothing could be further from the truth. There has been no more discussed, more canvassed, more consulted about issue in the last six weeks or so than the issue of a disability services inquiry. We have taken the sentiment expressed clearly by the Legislative Assembly on 18 October very seriously indeed.

Let me put it on the record, so the position of the government is crystal clear for all concerned in this debate. The government's view is that the matters which have been raised by members and members of the community with respect to disability services are matters of serious concern. The government does support the conducting of an inquiry into these matters, if necessary using the powers under the Inquiries Act, if matters which should be considered in respect of those concerns are not properly examined in some other way.

We believe the issues should be examined using appropriate powers for an inquirer to find the truth of the matter. It is clear the government has no desire to keep secret or to cover up any of the issues which may have led to complaints in or about disability services in the ACT. I hope that there will be an understanding that we do not stand opposed to full disclosure of the facts in this area.

The government has other obligations and, indeed, we would argue that the members of the Assembly have other obligations as well in this debate. The government has always expressed clearly its concern about the implications of an inquiry under the Inquiries Act for the proper conduct of the coronial function exercised by the coroner.

There are three deaths which, it has been alleged, are related to systemic failings and problems with ACT Disability Services. The coroner is in the process—as members who attended the round table meeting yesterday would be aware—of beginning the inquiry into each of those three deaths. Members will be aware that such inquiries are commenced by a police investigation, which in turn leads to a full process of hearing evidence by the coroner—in most cases at least—the formulation of findings, and the tabling of a report.

The coronial process is a very old process. It has been used probably thousands of times in the ACT, and the coroner who has been commissioned by the Chief Coroner to conduct these particular inquiries, Mr Michael Somes, is a very experienced coroner sitting on the ACT Magistrates Court.

The government consulted with the Chief Coroner about the implications of having an Inquiries Act inquiry for the coronial process, and the information he gave to the government, and which he repeated at the round table yesterday, was that he saw a real potential for an Inquiries Act inquiry to cut across the work that the coroner would perform. He believed that there would be a conflict potentially between the work that the coroner would do and the work that the inquiry would do under the Inquiries Act.

Let us remember that the inquiry under the Inquiries Act is not an ordinary inquiry of the kind that might be conducted by a designated public servant or by an Assembly committee, for example, or by some other process where somebody is asked to review a particular area. This is not the same kind of inquiry.

An inquiry under the Inquiries Act has at least a semijudicial, if not a fully judicial, status. It is conducted with extensive powers. These are powers that allow the inquiry to call evidence before the inquiry and, indeed, to compel people in certain circumstances to provide evidence before that inquiry.

That is a matter that clearly puts it at a level above other sorts of inquiries. It is also, therefore, of the same nature as an inquiry under the Coroners Act. The Chief Coroner, who made it clear that he had no concern about the idea of there being some investigation of the issues that has been referred to in Mr Wood's motion, made it clear that the decision about whether to conduct an inquiry under the Inquiries Act was not for him to make.

Nonetheless, he made it crystal clear both in a letter, and verbally to members of the Assembly who attended that round table meeting, that there was grave danger in conducting an inquiry that would cut across a coronial inquiry that was already under way.

I ask members to imagine what the situation would be if there were to be a matter into which we were seeking an inquiry, and we commenced an inquiry into a particular matter in such a way as to frustrate the work of a coroner in another matter. How would

members of the Assembly regard it if we thwarted the due process that the coroner needs to embark upon? What would members say about the government in those circumstances? We can all imagine.

Yet this is the situation that arises here, but in reverse. The government has indicated that it is prepared for an inquiry: it is quite prepared to face the implications of an inquiry, with the good and the bad that comes out of such a process. It is prepared to support and to fund the necessary work of any inquiry, but it wishes to make sure that the other process laid down under law are not in any way thwarted or frustrated.

We have, in those circumstances, to take the advice and consider the views of the person whose responsibility it is to conduct such coronial inquiries. The Chief Coroner of the ACT, who also happens to be the Chief Magistrate, has made the position extremely clear. I will give you an example of the problem that might arise in those circumstances. An inquiry is conducted in such a way as to cause certain witnesses to be called to give evidence. Those witnesses, as I understand it, may be compelled to give that evidence.

The same witnesses could be compelled to give evidence to the coroner. The coroner may be coming to those witnesses after the inquirer has come to those witnesses. Is the coroner coming second to that evidence obliged to take notice of what has been already said in the earlier Inquiries Act inquiry? What if the evidence has been in some way corrupted by earlier having been elicited by the inquiry under the Inquiries Act?

Let me make it absolutely clear: there is the potential for the coroner's work to be thwarted, frustrated or corrupted by a concurrent inquiry under another process. This is not the first time the Assembly has faced this situation. Members will recall that, immediately after the implosion of the Royal Canberra Hospital, the government considered that the issues given rise to by that incident were of such gravity that there ought to be an immediate and full board of inquiry under the Inquiries Act. Indeed, the government moved to appoint a person to conduct that inquiry soon after the implosion on 13 July 1997.

Members will also recall that, shortly after that process began, the Chief Coroner, consistent with his views on this occasion, said to the government and to the person on the board of inquiry, that the potential for the inquiry to cut across the coronial process, which had arisen as a result of the death of Katie Bender, was significant and that the Inquiries Act inquiry should not proceed.

I want to read from a letter that the board of inquiry—Major General Neville Smethurst—sent to the then Chief Minister on 26 August 1997, in which he made reference to the views of the Chief Coroner and the Chief Magistrate on the question of a board of inquiry and a coronial process in conflict.

Mr Cahill had written to Major General Smethurst earlier and I quote from the letter:

> I have carefully considered the terms of his letter. I believe this Board of Inquiry was conspicuously proceeding in a way that would have avoided the problems described. However, despite the Board's best intentions, I would have difficulty guaranteeing that the Inquiry would not traverse some of the ground which the Coronial Inquiry might cover.

This is significant, Mr Speaker:

> Having regard to the principles of natural justice, and given both the Terms of Reference of this Board of Inquiry and particularly the provisions of section 21 of the Inquiries Act 1991, the Inquiry could not have been conducted by examining documents alone. Examining witnesses at a public hearing would have been inevitable.
>
> I do not envisage the Inquiry continuing if it were to be limited to an examination of papers. Accordingly, if the views of the Chief Coroner and Chief Magistrate about the possible impact of my Inquiry on the Coronial Inquest are accepted, I am prepared to resign.

And indeed, Mr Speaker, he did. There was also later legal advice obtained that supported the appropriateness of the view taken by the then board of inquiry, Major General Smethurst. In the circumstances, that was clearly an appropriate position for that board of inquiry to take. It considered that the views of the Chief Magistrate and Chief Coroner ought to be taken into account and that the potential for conflict was so great that it ought to have led to a cessation of one process or the other.

I ask members to consider that precedent. I also ask members to consider what they themselves—that is, what the parties then represented in the Assembly—had to say about that very process. I do not have copies of the statements that were made at that stage. Because of the lack of notice of this motion, we have still to obtain them. They might be tabled later in this debate.

Members will recall, I suspect, that they were quite explicit, quite outspoken about what was appropriate in these circumstances. As I recall, the Labor opposition of the day, Mr Whitecross in particular, was quite firmly of the view—perhaps even strident—that the inquiry should be shut down for the reasons given.

I would like to understand why Mr Wood feels that it is possible for Professor West, or somebody else, to conduct an inquiry under the Inquiries Act without facing the problems that arose in respect of Major General Smethurst's inquiry subsequent to the implosion. The coroner's views in both cases have been, as far as I can see, identical. If it was good enough for the Labor opposition then to say that the principles of natural justice demand that there not be an inquiry that would cut across the coronial process—

Ms Carnell: Very, very vocally.

MR HUMPHRIES: He made that point very vocally. Ms Carnell may well have the particular quotes concerned. *(Extension of time granted.)* It may be that those views were very clearly expressed on that occasion. I would like to hear what the differences are between these two situations because, whatever the views advanced by those in the opposition, they clearly are not the views of the Chief Magistrate. The Chief Magistrate's views apparently are that there is a conflict.

I want to make two points at this juncture. The opposition and others in the Assembly are clearly intent on this happening, and I suspect that they have the numbers to make it happen. That appears to be the case and I will see what actually happens when this matter is—

Mr Wood: Just accept it. Let us get on with it.

MR HUMPHRIES: I ask an opportunity to make my remarks without interruptions.

MR SPEAKER: Yes, I would welcome that myself.

MR HUMPHRIES: This is a fairly serious matter, Mr Speaker. We are talking about the deaths of a number of people, and I think it is extremely important that we do this very sensibly.

Mr Quinlan: Posturing.

MR HUMPHRIES: I am sorry. Mr Quinlan believes this is posturing. If I were to ignore the views of the Chief Magistrate or any other member of the judiciary in this way on another occasion, I would be flattened by this Assembly with a motion, and probably not just a motion of censure, but a motion of no confidence. What would members be saying about the Attorney-General of the ACT if he were to say to a member of the judiciary, "Look forget your views. I do not care what you think. Your views about how your work might be undercut by some political process are irrelevant. I am going to put it to one side. I do not care about what you think. I am doing it anyway."

Members would have me on toast in those circumstances, Mr Speaker. They would have my guts for garters. They would want my resignation yesterday. Yet now, when it suits members to have an inquiry, the views of the Chief Magistrate and the Chief Coroner are apparently immaterial. That is a matter of great concern.

This is corrupting more than a process laid out in the law, which allows for the government of the day to appoint inquiries under the Inquiries Act, not parliament—and I remind you that this is an act passed by the Labor government of 1991. It was their express view that the government of the day should appoint such inquiries. Mr Wood will recall that, because he was a member of that government at the time. If we use this device to overcome the clear intent and spirit of Terry Connolly's Inquiries Act, then we have set a precedent.

Let me say that it is my view that, although it is a terrible distortion of the conventions and spirit of the law to have this conducted in the teeth of opposition from the Coroner's Court, and in circumstances where clearly the spirit of the act has been violated as well, if it is the will of the Assembly that this occur, and it does indeed occur, we have set a precedent. We have set a precedent, Mr Speaker, and that precedent will be used in the future, including by the Liberal Party if it is in opposition. Do not assume that this precedent will be quickly cancelled again when everyone realises subsequently the foolishness of the decision that has been made.

The second point I want to make is that the Labor Party in particular, which is moving this motion, is going to have to bear the consequences of their actions today. If the government, pursuant to the dictate of the Assembly, appoints an inquiry under this motion, and if the coroner subsequently reports that he is unable to reach conclusions about the deaths and associated matters of these three people, if the coronial process has been corrupted as a result of this motion, the Labor Party will wear that.

We will make this an election issue. The Labor Party, which has so stridently told us that the rule of law has to be sacred in this place, now tells us we are going to say to the coroner, "Your views are immaterial. The threat to your work is of no consequence to us. We are going to override your views. We are going to threaten the coronial process and have another process that will cut across that." If they say that, they will wear every ounce of political argument that comes from that fact. The fact that the inquiry is technically appointed by the government at the end of the day will not save them in that regard.

I urge members strongly not to break the rules in this way, not to distort the political precedent that has been set, the conventions in this area, and not to support this motion.

MS TUCKER (3.45): I think there are a couple of issues here that do need to be addressed. I will respond to some of the points that Mr Humphries raised, particularly about the issue of the integrity of the coronial process being threatened by an independent inquiry under the Inquiries Act. We did have a round table meeting yesterday, obviously, where we discussed some of those issues, and some of the concerns were addressed. Unfortunately, however, Mr Humphries was not able to stay, so perhaps that is why he has not actually responded to some of the other views that were put forward there.

Mr Humphries has presented a picture of absolute gloom and doom. He says we need to be very, very frightened here because, if we support this inquiry, we are basically threatening the integrity of the coronial process, we are showing disrespect to the judiciary, and we are setting a very dangerous precedent.

The first thing I have to say is that, clearly, nobody in this house wants to do any of those things. It is really quite interesting to me that Gary Humphries would not understand that people in this place have all been thinking about this long and hard for six weeks—not just Mr Humphries—and talking to many people about it. I have spoken to at least five—if not more, actually, when I think about it—legal practitioners in the ACT and in New South Wales about these very questions that Mr Humphries has raised.

It is a pity he is not listening, because I am actually more interested in Mr Humphries' response than Mr Moore's here, but Mr Moore is talking to Mr Humphries. I think I should raise the point that, as the new Chief Minister, Mr Humphries has a lot more at stake here than Mr Moore does. I might address that later, when he is not so busy talking to Mr Moore.

One of the first things that strike you when you talk to various people—the professionals in the sector—is that particularly they have is a very different view about how threatening an independent inquiry has to be to a coronial investigation. Given that we all respect the judiciary, the separation of powers and the integrity of the coronial process, the 10 members of this place still want to pursue an independent inquiry.

Now why would that be? It must only be because we have been reassured that, in fact, it is not impossible, it is not a terrifyingly dangerous precedent, but it is actually quite possible. And why is it that we would have come to that conclusion? Probably because

we have been talking to many people in the field, in the ACT and in New South Wales, who have a different view from Mr Humphries.

In New South Wales, for example, I was interested to talk to Robert Fitzgerald, who is commissioner of the Community Services Commission. Someone from my office also spoke to Marilyn Walton, who is now Professor of Medicine at Sydney University, and was for many years a health care complaints commissioner in New South Wales. Both of them have had plenty of involvement in concurrent inquiries into coronial inquests, civil and criminal law investigations.

It was the view of both of these people, who have been working with such inquiries, that the holding of coronial inquests alongside broader inquiries is common in New South Wales, and there have been no complaints to the commission in this regard. Indeed, coroners have, on the whole, welcomed the process.

They both saw no merit in the argument that a concurrent inquiry under the Inquiries Act would have to interfere with the proper conduct of coronial inquests. There would only be some concern if the inquiry was directed specifically to look at the immediate manner and cause of the deaths. That is a very important point, obviously. What is clear is that, if there is a professional and sensitive approach taken by both sides, as has happened in New South Wales on the whole, there is not a problem. It is actually welcomed. It is welcomed by the coroners.

So what is the problem here? Why is there a problem if we have a person running an independent inquiry under the Inquiries Act who understands the complexities and sensitivities of having two concurrent inquiries—as certainly Professor West would, having worked in that field in New South Wales with many concurrent inquiries.

If that person understands that the coronial process is central and the committee—or whoever does do this, but hopefully it will be Professor West if that is what the Assembly has asked for—understands and works professionally with the sensitivities around the two processes, then the actual inquiry under the Inquiries Act can steer around and accommodate the necessity of the coronial investigation. We do not know why there is a problem with this. Mr Humphries and Mr Moore have not explained that in any way.

We then got to the point when Mr Humphries said, "This is the same as the implosion," and Ms Carnell interjected in agreement. This is not the same as the implosion. The implosion inquiry was about a child who died, an accident that was the result of a major stuff-up, a horrendous tragedy. There was an investigation into that death. This is about services for people with a disability who are in residential care.

Yesterday, in the round table meeting, it was suggested that, if the inquirer did not focus on the manner and cause of death, and actually did not focus on the deaths at all, it would be a shallow inquiry. That is not correct. What is absolutely clear to 10 members of this Assembly is that, if the inquirer did not address the deaths, there would be plenty to do.

Almost every day I receive a call from someone in the community saying, "What has happened to this inquiry? We need this inquiry. What is happening? Please make it happen." And I say, "You must understand that there is an issue with the coronial

investigation. It may not be able to address the deaths." And they say, "That does not matter. This is not just about the deaths."

The deaths were what triggered the concern. They were the last straw if you like, but what people in the community are saying is, "Let the coroner look at the manner and cause of the death, but we need an independent inquiry under the Inquiries Act, because we do not trust the government's internal reviews. The Standing Committee on Health and Community Care in the Assembly does not want the work, and we still would prefer that it was not held in the Assembly committee system, even if they did want the work."

They say that because they are concerned about making complaints in a political atmosphere, because there are links to the government, and because there is a culture of fear associated with complaints. Even the conservative Carers Association is saying that in front of the television cameras now, and Mr Moore denies it, of course.

However, we are now hearing more than 20 community organisations saying that they are supporting concerns about the culture of fear of complaint. We are hearing over 20 community organisations say they want an independent inquiry under the Inquiries Act. They realise that it will not be able to look specifically at the deaths, but they do not mind, because there is so much work to be done.

Mr Moore said at the beginning of this debate that this is just about semantics, because Mr Wood has put a motion which is changing the language, which is making it a stronger direction to government. This is not just about semantics, this is about the nature of this parliament. This is about who Gary Humphries is, as the new Chief Minister. This is about who Gary Humphries is, because he has told us that he wants to bring his own style to the Assembly, that he wants to work with the community, and he wants to reflect the community's concerns.

What we had here was 10 members of this Assembly calling on the government to take a particular action. We are now requiring and directing the government to do that. Is he still going to say, "Well, even though the statement has come from 10 members of the Assembly, reflecting over 20 community organisations and many individuals—from that body of evidence and concern—we are going to ignore it because we know better, because we are concerned about the coronial process, and because our Chief Magistrate has said there may be some difficulties."

The Chief Magistrate also said it is up to the Assembly to make its own decision. I have just made it quite clear that, in New South Wales, this does not have to be a problem if there is goodwill and a professional approach. *(Extension of time granted.)* This is not the same as the implosion. This is about broad issues concerning people with disabilities in residential care. As I have made quite clear, this inquiry does not have to look at the specific deaths.

I said it would be possible for us to add some words, if that was helpful to the Chief Magistrate. We could add some words to make it quite clear what it is that the inquiry can look at and not look at. But that has not been picked up, obviously, at this point. Nevertheless, I am leaving it there on the table as a possibility.

Mr Humphries talked about contamination of evidence. He asked what would happen if the inquirer compelled someone to give evidence before that person was compelled to give evidence or had to give evidence to the coroner? Why would a professional person compel anybody to give evidence to an independent inquiry if they knew it would cause a problem for the coronial investigation?

They would only do that if they did not have good intentions. No-one is suggesting that a person of stature such as Professor West would come in with bad intentions. Why would this be the case? Why would anyone be compelled to give evidence when it is quite clear that, in New South Wales, it has not been a problem for these inquiries to work around coronial processes.

This business of compelling someone and contaminating evidence does not have to be a problem at all. It is just about how the process is handled by the independent inquiry.

Mr Humphries: The coroner thinks that it is a problem, Kerrie.

MS TUCKER: I notice that in the coroner's letter there is really one paragraph where he focuses on what he thought could be some of the problems. I quote:

> To have two investigative operations occurring simultaneously will substantially hamper the free running of the coronial inquest.

It does not have to be that way at all. Obviously it could hamper the inquest, but it does not have to, because it does not in New South Wales. The letter continues:

> The resultant publicity will cause upset to witnesses and others.

What resultant publicity? There do not have to be any public hearings in independent inquiries.

Why is there an assumption there that these hearings would be public under the independent Inquiries Act? As I understand it, they usually are not, as are such inquiries in New South Wales. I do not know what happened in previous inquiries under the Inquiries Act, but clearly the assumption is there that the worst is going to happen, that the most difficult thing is going to happen. I do not understand why that assumption has been made.

If there was a discussion with goodwill, the coroner could be reassured, I am sure, that such things would not have to happen. "It is undesirable that witnesses give evidence in different fora on separate occasions." I have already addressed those issues. "This will result in confusion, overlap, and the creation of a certain staleness 'of the evidence and the witnesses'." Having talked to people in the legal profession, I understood that staleness is usually actually a part of what can be seen as contamination of evidence, but it is usually related to a period of time elapsing.

So once again, these are issues that can be worked through if people have goodwill. I am sure that the coroner would have the goodwill to address these issues. If this Assembly, as is its right, has determined that there should be this inquiry, then, because I respect the Chief Coroner and the Chief Magistrate, and the coroner who would undertake this

inquiry, I believe that they would work professionally with the person who was charged with taking on this inquiry.

These people can work professionally and sensitively. It is really quite interesting to me that so little faith is being demonstrated here by Mr Moore and Mr Humphries about the possibility of this actually working.

Mr Humphries: And Mr Cahill.

MS TUCKER: Well, no, I think Mr Cahill has said that, if the Assembly wants to see this happen, then it is the Assembly's right. He has highlighted some difficulties here, but I cannot believe that what you are saying is that he is saying it is impossible. He is not saying it is impossible to address these issues. He is posing problems.

The fact is that these concurrent inquiries occur often in New South Wales and are managed quite well without problems—I would not say 100 per cent, because Mr Cahill told us yesterday that sometimes there are issues. *(Extension of time granted.)*

It is unfortunate, as I said, that we have had to do this. I will just get back to what is happening here fundamentally. There is clearly a way where there is a will, and I believe that it is quite possible to have two concurrent inquiries. It is clear that Mr Moore is not going to countenance it, but I am urging Mr Humphries to consider this very carefully, because his interests as Chief Minister, and the interests of his party, are different to the interests of Mr Moore.

Mr Humphries has to take into account the long-term interests of the Liberal Party, and he needs to understand that people in the community are saying that this is about politics, and this is about the government not wanting scrutiny. They know it is possible to have these inquiries, because enough communication occurs—between the sectors, across borders—to know it is possible. We are seeking a sign of leadership from Mr Humphries, and want him to say, "If 10 members of the Assembly say that we need this inquiry, we need it."

People know that Mr Moore himself once introduced a piece of legislation to force motions onto this parliament. Mrs Carnell supported it because she said, "I support democracy." But, my, how times have changed, because now Mr Moore is a minister and he knows better. He knows that, really, when he is in a position of power, it is not about democracy at all: it is about him having his way.

Mr Humphries needs to really look at what that means, because what we are seeing here is a contempt of this Assembly. We may well have to have legislation that Mr Rugendyke has tabled today, which will be passed. People understand that the Hare-Clark system delivers a minority government that has to listen to the majority of members. Clearly this minority government thinks that is not necessary.

MR STANHOPE (Leader of the Opposition) (4.03): I do not wish to speak for long. The points that I would wish to make have been made very well by my colleague Mr Wood and by Ms Tucker.

There are some issues around this point, though, that do bear repeating and reinforcing. The Assembly has delivered a very clear message to the government that it wishes an inquiry to be held into a range of disability services. The terms of reference are quite wide-ranging. They deal with a range of issues covering service quality, service monitoring and accountability, consumer protection and resource allocation. The terms of reference do not extend to the sad and unfortunate deaths that have occurred in care.

The government has resisted the inquiry, and we can all, of course, wonder at why it is the government has resisted as strenuously as it has.

Mr Moore: They have never resisted an inquiry at all.

Mr Humphries: It is what the coroner has said that—

MR STANHOPE: We can all ask aloud, and wonder, why it is that the government has shown this tremendous disinclination to actually proceed with, and to respect, the wishes of the Assembly.

Mr Humphries: Because of what the coroner has said.

Mr Moore: That is right.

MR STANHOPE: The Chief Minister and the minister interject now that the basis for their position is wholly and solely the advice of the Chief Magistrate.

Mr Moore: Wholly and solely, that is the most important thing.

Mr Humphries: That is right.

MR STANHOPE: The view has been expressed that the basis for the case that has been made by the government is the view of the Chief Magistrate. Yet, we all know that the Chief Magistrate has gone to enormous lengths to indicate that the decision on whether or not to proceed with an inquiry is a decision for the Assembly. The Chief Magistrate has been acutely aware of issues related to the separation of powers, and we are also acutely aware of issues related to the separation of powers. It is important, it is vital, that this Assembly does not do anything to interfere with those vital arrangements.

The Chief Magistrate, in his letter, does not say that that outcome is the absolute and ultimate consequence of an inquiry being undertaken as requested or suggested by the Assembly. He does not say that. He points to what he regards as a number of issues, quite serious issues, and he has strongly held views on some of those issues. But then again, members of this Assembly have equally strongly held views in relation to the need for inquiry. So we have a circumstance here in which the Chief Magistrate is writing in relation to his responsibilities under the Coroners Act, expressing some firmly held views about his responsibilities.

I have some firmly held views about the need for an inquiry. I have some firmly held views that an inquiry can be conducted pursuant to these terms of reference without anybody, in any way, interfering with a coronial inquiry. There are a few issues to be resolved, some of which Ms Tucker has already discussed. And there is a response that

can be made to every point that the Chief Magistrate makes in his letter. Anybody who looks at the Chief Magistrate's concerns could make a reasonable response, not just an arguable case.

There are, for instance, issues that Ms Tucker did dwell on, such as those concerning the impact on witnesses. The Chief Magistrate is concerned about issues related to the undesirability of witnesses giving the evidence on separate occasions. It may be undesirable, but that does not mean that there is any other good reason, in the circumstances, not to do it. He simply says it is undesirable. That is not a reason to prevent it. Lots of things in an ideal world are undesirable.

He talks about the fact that the coronial process will have available to it a raft of information that would otherwise be unavailable. Now that is a statement that I simply do not understand. If there is information that is available and can be made available to the coroner, it can equally be made available to a commission of inquiry. There is absolutely no reason why that cannot happen.

There are other aspects of the Chief Magistrate's letter and position that I do not fully understand.

Mr Moore: It is a shame you did not ask about it yesterday.

MR STANHOPE: Well, I looked at the legislation. The Chief Magistrate believes that, under section 52(4) of the act, that the coroner has a duty to make wide-ranging inquiries in relation to systemic issues. Section 52(4) of the Coroners Act says no such thing. Section 52(4) of the Coroners Act says the coroner may comment on any matters connected with a death that relate to public health and safety. It does not say he must.

The Chief Magistrate has actually reproduced the provision in section 52(4) indicating that the coroner may comment on such matters in his letter. I quote the Chief Magistrate:

These provisions provide the coroner with the power and duty to make wide-ranging inquiries including coverage of systemic issues arising from deaths.

He quotes the Katie Bender inquest as an example in point.

But there are significant differences between the death of Katie Bender and the coronial inquiry into the hospital implosion, and the coronial inquiry into these deaths. The hospital implosion was by way of a major disaster. It was a completely different circumstance to the circumstance that we are addressing here. It was a major disaster, a monumental disaster, a disaster that potentially put at risk the lives of hundreds of people. And the coroner did hold a wide-ranging inquiry into systemic issues arising out of the hospital implosion. That is not what we are talking about here.

We are talking here about a situation in which there is no cogent argument to suggest that the coroner cannot go off and do his duty, and that this Assembly cannot initiate an inquiry into all those other issues that are vital in an assessment of the extent to which disability services are being appropriately delivered in this city, for the people of Canberra.

This is an inquiry into service quality, service monitoring and accountability, consumer protection, and resource allocation. That is what it is expected that Professor West would concentrate on. He is not being asked to inquire into the specific causes of these deaths. He has the wit, the intelligence, and the sensitivity to be aware of the coroner's role and power, and of the need not to trespass in those areas.

It is a nonsense to suggest that a government cannot initiate an inquiry into a matter that involves or is connected to a death, and which does involve a coronial inquest. I notice from the annual reports that were debated a week or two ago that, over the last year, the coroner has inquired into somewhere over 100 deaths.

I looked at the range of issues that arose out of those deaths, or the causes of those deaths, and I think there were 42 complete coronial inquiries into deaths. They covered an enormous range of circumstances. They covered road deaths. They covered poison deaths. They covered drownings. They covered the whole range of causes of death that we are aware of, and that people suffer within our community.

Is it seriously being suggested that this parliament not inquire into any single one of those issues? There was an unfortunate death in the Cotter River yesterday, a very sad occasion. Is it seriously suggested that, because of that death, this parliament could not initiate, if it felt so moved, an inquiry into the safety of swimming in the Cotter River, or the safety of our waterways? Is it seriously suggested that we could not inquire into the two matters in tandem because it is necessary for the death of the person who drowned in the Cotter River to be subject to coronial inquiry?

Of course, it is not a serious suggestion that anybody in this place would make. If you look at the range of deaths that have occurred and that have been investigated by the coroner over the last couple of years, you will see that it covers, as I said, every conceivable cause of death that human beings suffer. They have all been examined by the coroner, and I have no doubt that a range of other inquiries ran in tandem with his inquiries that in no way affected the coronial process.

It is a nonsense to suggest that we cannot initiate an inquiry into the systemic issues in relation to the delivery of disability services and care because there is a coronial inquiry currently proceeding in relation to some deaths of people in very sad circumstances while they were in care. It is just a nonsense to me. I respect the Chief Magistrate, I respect his views, but his views are not holy writ. They are strongly held views. And he has the right to express them, but we have our views, we have expressed them, and we expect this government to respond to them.

MR MOORE (Minister for Health, Housing and Community Services) (4.13): Mr Stanhope, I have to say to you through the chair that it is a great shame that you were not there yesterday when we had the meeting with the coroner.

Mr Stanhope: My colleague was, minister. Don't patronise me and insult me in that way.

MR MOORE: It is a great shame that you were not there when the meeting was held with the coroner, because I think you would have understood, by his tone and by what he was trying to convey, that he had a significant concern about this. You have conceded he has a significant concern. I understand that.

Mr Stanhope: Strongly held views.

MR MOORE: And he has very strongly held views. Those views, of course, are contained somewhat, because he made it very clear to us that he does take a great deal of care to respect the separation of powers. He made that very, very clear to us in what he was talking about.

It seems to me that it is very important for me to say that I have never resisted an inquiry into disabilities. I encouraged Mr Wood. In fact, I noticed yesterday—I have not checked today—that Mr Rugendyke still has a motion on the notice paper referring that very inquiry to Mr Wood's committee. Mr Wood, who has initiated this motion, did not want to have that inquiry, and did not think it important enough to have that inquiry, at the time.

Mr Wood: Garbage.

MR MOORE: You have a look at the date on that original motion.

Now, that is water under the bridge. We have moved on, and what we are interested in is having an inquiry under the Inquiries Act. I have said I am happy to have an inquiry. I would particularly like an inquiry. I have said a number of times that I am particularly keen to have an inquiry into advocacy: to look at the community advocate, look at the quality of our advocacy, and to make sure that we do deliver the best advocacy service. Of course, that should also include learning whatever we can learn in terms of how we can improve our disability program. I am very, very keen to do that.

What I have also said is, of course, that this is what the coronial inquiry sets out to do. It investigates the death, and the Chief Coroner assured us yesterday that the coronial inquest would also look at those systemic issues.

Now, what Ms Tucker actually presented to us in a very strong way is that the real difficulty, she says, is that there is a lack of goodwill here in this process. I have to say that I have to agree with Ms Tucker—there is a lack of goodwill here in this process. Yesterday I convened a meeting with her, with Mr Wood, with Mr Rugendyke, and the Chief Coroner. On a number of occasions I have suggested different ways of conducting the inquiry to make sure that it worked with the coronial inquiry. I have produced a series of suggestions. And what sort of goodwill have we had from Ms Tucker, who talks about goodwill? None, zilch.

Why have we had no goodwill from Ms Tucker? How do we know? She has not moved her position one iota, and yet I have worked very, very hard to develop possible alternatives that would be sensible, would fit in with the coroner, would respect the coroner's concerns, and still deliver the most effective possible inquiry.

There is another factor, of course, that is missing here. Ms Tucker has a particular faith in Professor West, because she keeps saying, "If we just let Professor West do it, and work with the coroner, there will be goodwill and we will not have to worry about these problems." But she seems to forget—and I am sure Mr Wood will remember—that the Chief Coroner himself said something to the effect, "I have known Professor West for some 30 years. He is a man whom I like and respect, but I still think we cannot conduct an inquiry under the Inquiries Act parallel to the coronial inquiry."

Remember, the Chief Coroner is not the coroner who will be doing the investigation: Magistrate Somes is going to do it. So it is not a lack of goodwill between Professor West and the Chief Coroner—who told us he had spoken to Professor West.

When we talk about goodwill and so on, it is important for us to remember that it applies across the board. Of course, Ms Tucker also pointed out that she has talked to people in the legal profession, and she has talked to the community. She always says she has talked to the community. What Ms Tucker usually means by this is that she has listened to special interest groups. It is special interest groups who are her sense of the community. Of course, all of us can talk to the legal profession and get the answers we want, because most of us know exactly how to do that, should we wish to.

I think that we do have a process problem here. That is what we are talking about. I emphasise, again, that I am quite comfortable about generating an inquiry into disability services, and I am particularly keen to have an inquiry into some aspects of disability services—the areas that I am not quite sure how to handle. I should also reassure the Assembly that this will not stop us—as I assured them at the meeting yesterday—proceeding to make improvements on things that we can see are wrong.

In fact I have talked to Mr Szwarcbord, the head of Community Care, and my department, about injecting extra funds to deal with specific issues that he believes have been highlighted by concerns that people have raised, and by these deaths. There is another aspect I would like to consider, and to do that I will read from the Government Solicitor's letter with regard to the interference of a committee of inquiry with the coronial inquiry. It does not apply to this one. It was written in 1997 with a clear intention of dealing with the issues between Major General Smethurst and the coroner.

The then ACT Government Solicitor, Mr Peedom, wrote:

> You have asked for my views in relation to the request by the Chief Coroner that any further action by the Board of Inquiry be halted until the Coronial process is complete and/or any decision in relation to any criminal charges that may arise has been made and any such charges dealt with to finality.
>
> The function of the Coroner under the Coroners Act 1956 is to hold an inquest into the manner and cause of death of a person who is killed; to make findings, if possible, as to the identity of the deceased; how, when and where the death occurred; the cause of the death, and the identity of any person who contributed to the death. The Coroner is empowered to comment on any matter connected with the death including public health or safety or the administration of justice and to make recommendations to the Attorney-General on such matters.

> The function of the Board of Inquiry under the Inquiries Act 1991 is to inquire into matters specified in the Board's terms of reference and to submit a report to the Chief Minister. There is no legislative provision for resolving the paramountcy of either tribunal in the event that their functions overlap.

I think that is really fundamental, because, as has been pointed out to us, this can become part of a court wrangle. The letter continues:

> In addition, however, to the reporting functions which both have, the Coroner is empowered, where (s)he is of the opinion that the evidence presented is capable of satisfying a jury beyond reasonable doubt that a person has committed an indictable offence, to initiate criminal processes against that person. I note also that section 73(i)(b) of the Inquiries Act makes it an offence for a person to "wilfully interrupt, interfere with or obstruct the proceedings of the (Coroner)". It was perhaps in recognition of the serious consequences, ie, criminal charges, that can flow from an inquest that the terms of reference of the Board of Inquiry required it to "liaise with the Chief Coroner to ensure full co-operation".

That refers specifically to the previous inquiry, but it is the same thing that has been suggested by Ms Tucker, to obtain full cooperation between the two. The letter continues:

> Whether the point has now been reached where the Board of Inquiry will, by virtue of its overlapping functions, impede the future conduct of an inquest is not a matter which I can address. The issues raised by the Chief Coroner in his letter are based on matters within his knowledge which are not known to me. I note, however, that he makes reference to "possible criminal offences, some of which are serious" arising from matters which are the subject of investigation for the purpose of an inquest.

Of course, that is possible in this case as well. The letter continues:

> Section 19 of the Inquiries Act, to which the Chief Magistrate refers in his letter, is of potentially broad scope. It precludes from use other than by the Board of Inquiry any information, document or thing obtained as a direct or indirect consequence of the making of a statement or a disclosure to the Board of Inquiry.
>
> As the Chief Coroner points out in his letter, if matters incriminating of a witness are given by or through that witness to the Board of Inquiry they and other matters, including information obtained as an indirect consequence thereof, could not be used in subsequent criminal or civil proceedings. In circumstances where, according to the Chief Coroner's letter, there appears to be some prospect of criminal proceedings (including those of a serious nature) and, having regard to the fact of death, injury and some property damage in consequence of the demolition of the buildings, the likelihood of civil proceedings, the proceedings of the Board of Inquiry, in my view, have the potential to serious complicate and possibly impede the proper conduct of a coronial inquest. I note also that subjecting persons to an obligation to give evidence to the Board of Inquiry could interfere with the ordinary processes of police investigation in a way that might affect the quality of the evidence to be given to a Coroner's Inquest.

Mr Deputy Speaker, I read all of that to make sure it was not taken out of context. Some of the things mentioned, as each member can hear, applied specifically to the inquiry into Katie Bender's death, but do not precisely apply here. I am quite comfortable about conceding that. But the general thrust of what is going on in this letter is the same thing that the coroner is telling us now. The coroner has made it very, very clear to us and it has created a problem for us. He says, "No, there are real problems in conducting these two inquiries." *(Extension of time granted.)*

So what the coroner has put to us is: "Please do not proceed this way." I came back to members and said, "Okay, here are some alternatives as to how we might proceed." None of those have been considered in any reasonable way. It was very clear at the meeting yesterday that they thought, "We are going to have what we demanded and that is all there is to it." I am seeking to find a way through that, in a sensible way, with goodwill. I am trying to ensure that we have a proper understanding of the ramifications of what we are doing, and that we can do it in an inclusive way.

This motion does not respect that. It is, on the contrary, saying, "No. We have decided an inquiry under the Inquiries Act by Professor West is what we are going to have, and that is all there is to it. Thank you very much. We do not care what you think." That is what we have in front of us.

MR KAINE (4.25): I must say that I am quite concerned at not only the lapse of time since the original motion was passed by a majority of this Assembly, but by the tone and the nature of the debate today. If the government had responded as it should have done to the motion of 18 October, the inquiry would have been in place three weeks ago.

Yet here we are today arguing the point about whether we should have an inquiry. That is the nature of the debate today, not "Should we get on with the inquiry?", but why we should not have one. That is what we are hearing from the government, and that, I have to say, disturbs me greatly.

That motion was put forward by Mr Rugendyke on 18 October, because he and some of us in this place shared the concerns of people out there in the community who are directly facing the problems that this motion is designed to deal with. Mr Rugendyke did not think of it just by sitting at his desk. He did not think of it sitting in his office. He responded, as he is expected to do, to the interests of members of the community.

It was not only Mr Rugendyke who passed this motion. A majority of the members of this place did so, and we did so because we felt that there was some substance to the problem, and it needed to be investigated. It needed to be investigated in a specific fashion so that there could be no criticism after the event that it was engineered, that it was modified, that it was somehow influenced unduly, because it is—as the Chief Minister has pointed out to us—in the nature of a judicial inquiry.

The Chief Minister gave us a lecture about what a judicial inquiry is. I do not think any of us needed that lecture. I understand quite well, and I think everybody else in this place understands what an inquiry under the Inquiries Act is about. It is certainly not an inquiry by an Assembly committee. We know that. It is not an inquiry by a committee formed by the government from members of the community. We know that too. We know exactly what an inquiry under the Inquiries Act is and what it is intended to do.

Yet we had that little lecture from the Chief Minister, just in case we were too stupid to understand what an inquiry under the Inquiries Act is. I did not need it and I do not think the rest of us did, either. It is simply a part of the continuing debate about whether we should have an inquiry; justifying not having an inquiry.

I do not buy that, Mr Deputy Speaker. The voice of this Assembly on 18 October was quite clear. A majority of members of this place said to the government, "We want you to conduct an inquiry and we want you to begin it within 21 days," an achievable objective. The terms of reference are quite explicit, despite the rhetoric about interfering with the coronial inquiry that has come from both the Chief Minister and the minister for health. They are quite different from the terms of a coronial inquiry.

There is no reason, then, that I can see why there should be any concern about one intruding onto the other. Even if there was some possibility of that occurring, the two inquiring officers, a coroner and an officer under the Inquiries Act, are quite capable of sitting down across the desk and saying, "Well, we seem to be running into each other's territory here. How are we going to handle it so that we do not?"

I simply do not accept the argument from the government that it is all too hard, and that we should therefore conduct no inquiry at all. Mr Wood has come back today because he, like some of the rest of us, has become a little concerned that the government seems determined not to do what the Assembly asked them to do.

It may have escaped the government's notice that it is a minority government, and when a majority of this place places an onus of responsibility on it to do something, any sane person would get on and do it, and not spend the next six weeks arguing about why they should not and why it is all too hard. It is not too hard. It is not too complicated. I am sure the minister for health can understand the nature of this problem just as well as Ms Tucker can.

I find it quite distasteful that the minister would try to deflect the argument using a personal attack on Ms Tucker and her motives, but of course he is quite good at that. I think that he ought to be offering an apology to Ms Tucker for his attack.

I think it is timely that Mr Wood has brought this motion forward. It is a little harsher than the one that was passed on 18 October. It does not just ask the government to do it, in case the minister has missed the point, it directs the government to do this.

We have had two bites of the cherry: the first time we simply asked, but this time it is more than a request. I think it behoves the minister, the Chief Minister and the other members of the executive government to listen very carefully to what the majority of the members of this Assembly want them to do. And if they go away from here this afternoon and say, "We will continue with the same delaying tactics, and we will not get on with what we were directed to do," I think they ought to understand that there are ramifications.

I am not certain that most of the members of this place will be prepared to allow them to sit on their thumbs after having been told this time to get on with what they were asked to do six weeks ago. I am concerned about this. Because I am concerned about the

government's reaction to it, I support the motion that is being put forward by Mr Wood. I think something has to be done. It is not good enough to just sit and talk about it.

MR WOOD (4.31), in reply: I ask today that the government accept the will of the Assembly. I ask that the government not wait another week for Mr Rugendyke's amendment. I ask the government to recognise that this inquiry is going to happen, and to move as rapidly as possible, to move today, to see that it does.

I was disappointed that both Mr Moore and Mr Humphries further defended their position today. I hoped that they would stand up and say, "Okay. We do not agree with you, but we recognise it is going to happen. Let's do it." Mr Moore said that yesterday, at the round table meeting, if Mr Rugendyke's amendment is passed, it will be done. Well, this motion is going to be passed. If necessary, Mr Rugendyke's amendment will be passed. But let's not wait, let's get on with it.

Mr Humphries has said that the 10 of us were ignoring the Chief Coroner's remarks. Mr Humphries needs to be more careful with his words. We did not accept the full thrust of what Mr Cahill said, but we did not ignore him. We paid very careful attention. We listened to him. I read his letter many times after receiving it. We paid careful attention. We did not accept that there would be problems. We were not convinced that there were insurmountable problems about that issue.

Mr Moore might remember when I had a one-to-one with him, two or three weeks ago, that I encouraged him, as I think others had—and he had it in mind anyway—to convene a round table meeting with Mr Cahill. I was happy to have that further meeting. Mr Moore said, as I wrote down, that he was willing to cooperate. I am not sure what cooperate means in that context, but he was very keen to do something, and he wanted to find a way through with goodwill.

Maybe, but it simply did not accord with what the majority of this Assembly wanted. Mr Moore has made various proposals about the nature of an inquiry that could look at complaints and other things, and as to who may carry out such an inquiry. He recognises, however, I am sure, that for the rest of us, his proposals were simply too limited and too narrow, and that the rest of us do not believe that would be an adequate response. We all want goodwill, but I am afraid the majority here will rule, and it has to.

I recall that Mr Moore said something of the order, in commenting on Ms Tucker, that she was overcommitted to Professor West, that he was her personal choice, or something like that. I know that is not the case. I know that numbers of names were proposed. I know that Ms Tucker did not come up with the name of Professor West. Other people did, in their good advice to her, or advice that was certainly accepted as being good. Professor West is not Ms Tucker's choice, as I understand it. She can correct me if I am wrong, but the choice of people who know the field, and I think that point has to be made.

Let's get on with it. Let's pass this today. Again, I ask the government to accept the will of the Assembly. Come back as soon as you can and say this inquiry is under way.

Question resolved in the affirmative.

YARRALUMLA BRICKWORKS AND SURROUNDING LAND DEVELOPMENT—PUBLIC CONSULTATION

MS TUCKER (4.36): I move:

> That this Assembly calls on the Government to—
>
> (1) abandon the current public consultation process on a development control plan for the Yarralumla Brickworks and surrounding land between Cotter Road and Denman Street; and
>
> (2) commence a new community workshop consultation process that—
>
> (a) only addresses options for the future use of the Yarralumla Brickworks buildings and adjacent land within the area defined as 8A in the Territory Plan, and associated access and traffic issues; and
>
> (b) is independent of any government process to determine an alternative location for Floriade.

Members are no doubt aware of the community consultation meeting last Thursday on the development control plan for the Yarralumla brickworks which degenerated into a total debacle and ended with a scuffle between two grown men over a microphone. I was at the meeting and I was totally appalled by this so-called community consultation process. This meeting must have been one of the worst community consultation meetings I have attended in my time here.

What was apparent from this meeting is that around 200 people, with a handful of exceptions, were very upset that their concerns were being ignored by the government and its consultants. They felt that they were being steamrolled into accepting a very narrow range of options for the redevelopment of the brickworks, all of which involved the movement of Florida to the site and the building of substantial levels of housing when they felt that none of these options was acceptable. They also felt that they had been fed lies and disinformation by the government and its consultants. In short, they are totally disillusioned with this consultation process, and I agree with them.

I doubt if there is anyone in Yarralumla or this Assembly who does not want something to be done to the brickworks site. The brickworks closed in 1976 and, apart from some minor uses, has been sitting virtually derelict since this time. The buildings and structures are gradually falling down and the area is becoming overgrown. There have been various attempts over the years to find an alternative use for the site. After the brickworks closed, a developer, Mr Marr, took over the site and proposed to turn the brickworks into a major tourist complex and build housing on adjacent land. He began improving the site but went bankrupt in 1980. By this stage some housing was approved on the eastern side of the site.

The federal government resumed the lease and rented out parts of the site for such things as art and craft studios and antique shops. A conservation plan prepared for the site in 1986 recommended that many of the buildings and structures be restored and a heritage interpretation centre and an arts and crafts facility be developed in the old buildings, as well as the building of housing on vacant land around the edge of the site. However, this plan was never acted on.

In the early 1990s another proposal was put forward to turn the old buildings into a country club-style tourist resort that would be linked to the adjacent golf course. The area was subsequently zoned for entertainment, accommodation and leisure uses under the Territory Plan. If you look on the Territory Plan map you will see that this area is coloured in blue and designated as 8A. However, the developer withdrew and again nothing happened with the site. Since then there have been various attempts by government and the Yarralumla Residents Association to have further work done on determining a future use of the brickworks that would include the restoration of the heritage-listed buildings.

Residents thought that they were getting somewhere when the government agreed to initiate a consultancy to prepare a development control plan for the site. However, just before this consultancy started, the former Chief Minister unilaterally announced that Florida was to be moved to the brickworks and that the Yarralumla residents would go ballistic but she could not help that. The residents, who had in good faith entered into the discussions with the government on the future of the brickworks, felt totally undermined and betrayed.

That was bad enough. But when residents turned up to the first community consultation meeting they were told that the consultants were not just looking at the brickworks site but also at infilling in the open space between Denman Street and Cotter Road, which is outside the boundary of the 8A site. They were also told that land on the other side of Cotter Road next to the Curtin horse paddocks was being considered for overflow parking for Florida because the consultants needed to find space for 1,000 parked cars and 6,000 car movements a day during Florida.

It is no surprise that the residents were totally outraged at what they perceived to be a land grab of currently open space. They were also told by the consultants that all this extra housing on open space was necessary to generate funds to restore the brickworks, so if the residents wanted the brickworks restored they would have to accept the loss of their open space.

This was denied by an official from the Chief Minister's Department at the consultation meeting last week but by then the damage had been done to the community's confidence in this process. The official also denied that Florida was definitely being moved to the brickworks but residents found this hard to believe given that every option presented by the consultants provided for Florida.

Only at the end of the meeting did the official grudgingly accept that the option of no development of the brickworks for Floriade and no inclusion of extra housing would be included as an option to be presented to government. It is no wonder that tempers flared at this meeting, because the consultation process has been reduced to farce. I have spoken to many Yarralumla residents about this issue and there is a strong feeling that this consultation process has gone totally off the rails. They are totally disillusioned with the process.

I have moved my motion to abandon the current consultation process because I do not think anything more can be achieved by this process. It would be a waste of everyone's time to continue to fight over the options being put up by the government's consultants. I believe that there needs to be a fresh start on determining a viable future for the

brickworks site that involves restoring the heritage structures and finding a sympathetic use of the site that respects and highlights its heritage significance.

The government needs to separate this process from its consideration of the relocation of Floriade. In fact, the consultants' own work on assessing the suitability of the brickworks for Floriade found that the brickworks came fifth out of the possible 15 sites around Canberra. The best site they found was actually where it is right now in Commonwealth Park.

The government also needs to separate the future of the brickworks site from any proposals to put housing in the open space between Denman Street and Cotter Road. This proposal raises much bigger issues about the value of this open space and its role in the national capital open space system. This strip of land is actually the ridgeline that separates Yarralumla from Woden and there has been a longstanding planning principle in the ACT that such ridges and hills be kept as open space to separate the towns.

It is also the case that there is an area of remnant native grassland next to Dudley Street within this area that is listed for protection in the government's own action plan for natural temperate grassland. Yet this fact appears to have been ignored in the consultants' proposals for this land. Why were there not constraints given to the consultants, for heaven's sake? It is a case of "We don't care about grasslands, we just put roads next to them or through them."

The area 8A is much smaller than the land the consultants are looking at for development. It is, however, larger than the actual brickworks site and includes some open space to the south of the site on the side the natural bowl in which the brickworks stand. This land has not previously been built on but it has been disturbed over the years and is weed ridden. It is also in clear view of the brickworks and anything done with this land should be integrated with what happens to the brickworks.

My motion particularly seeks the initiation of a new community consultation process, or what I have termed a workshop process. Residents do want something to happen at the brickworks and many of them have some good ideas for mixed use development of the site that protects its heritage significance, and this development may well include some housing.

The concept of a workshop process, by the way, came from the community. It was interesting to me that they wanted to have those sorts of words included in this motion. I guess it is an indication of how disillusioned they are with the words "community consultation". They are afraid of what that will actually mean or how the government will interpret it, even though they do have a consultation protocol which, if it were observed, would probably be a reasonable process.

The community would like to work with experts from government in developing their ideas. They want to be regarded as partners in the process. What the residents do not want is to be treated like mushrooms.

MR MOORE (Minister for Health, Housing and Community Care) (4.45): I move the following amendment to Ms Tucker's motion:

> Omit all words after "That", substitute the following:
> "this Assembly requests the Government, after receiving the report of the consultants into the future of the Yarralumla Brickworks site, to convene a round table discussion including—
> the Minister for Urban Services;
> the Yarralumla Residents Association;
> the Department of Planning and Land Management; and
> the Consultants
> to discuss issues arising out of the Consultants Report and the public meetings which have taken place to date.".

Just today a member from my staff and the Minister for Urban Services met with the Yarralumla Residents Association. They were looking for a way through this matter. They recognised that indeed there were some real issues about the consultation process but they also recognised that the government has expended a significant sum of money on the consultation process. What they were seeking to do was find if there was a way they could move forward rather than throwing out the baby with the bathwater. The Minister for Urban Services had to leave the meeting early in order to attend question time. However, my staff member brought to me the suggestion that the meeting had agreed to.

The intention of Ms Tucker's motion is to make the point that the consultation has been inadequate and to find out what we are going to do about it. Her inclination is to get rid of it. The response from the residents at the meeting—and we listen to the community very carefully—was that we need to make sure that we know about what comes out of the consultative process.

We do know that the consultants are intending to present their draft findings to the residents in eight days time. So there is a process. The residents are interested in what the consultants will come up with. They want the consultants to respond to the sense of community; they do not want the report to be given just to government; they want to make sure that they have a say; and they want the government to understand exactly what is happening.

Therefore, I think the approach proposed in my amendment is a sensible way of dealing with the issues raised by Ms Tucker. It is, after all, the approach that the Yarralumla Residents Association agreed to at lunchtime today. So I strongly commend my amendment to you.

MR CORBELL (4:47): The government's record on the issue of the old Canberra brickworks is nothing but appalling. In view of this, it is not surprising that the minister is now leaving the chamber.

From the moment that I took on the shadow planning portfolio in the Assembly, the brickworks issue has been on the agenda. Over the past 18 months to two years we have seen from the government a continuing record of deception, incompetence and failing to consult the local community.

We only have to go back to the issue of the commitment entered into with Allied Projects before the last ACT election to know that this government says one thing and does another. Before the last election this government gave an assurance—indeed, Mr Humphries, the now Chief Minister, gave an assurance—to the Yarralumla Residents Association that it was in no way examining or was in discussions with private sector bodies to look at the possible release of the brickworks site. It took a freedom of information request by my office to establish that the government was in fact doing that at around the very same time that the minister gave his commitment to the Yarralumla Residents Association. So in that context there is no doubt that Yarralumla residents have every reason to feel suspicious of the government's intentions in relation to this valuable heritage site.

The consultation process that has occurred to date by the consultants engaged by the government has been a shambles. I believe this has been through no fault of the consultants, who appear to be professional, capable individuals. I have met with them, spoken with them, and I have no doubt as to their sincerity and the goodwill that they bring to this project.

But the point has to be made that the government itself took steps that meant that this whole process was going to be compromised from the very beginning. It was compromised from the very beginning when the then Chief Minister, Ms Carnell, was quoted on the front page of the *Canberra Times* as saying, "Floriade will go to the brickworks." I know that the then Chief Minister came out and retracted that statement but the damage was done. It was that sort of pre-emptive action by the then Chief Minister which fatally undermined community confidence in the whole consultation process.

What is the point of having a consultation process when the leader of the government of the day comes out and says, "This is going to happen"? Is it any wonder that people think that the consultation process is simply a rubber stamp exercise conducted by this government to ensure that some sort of legitimacy is given to the decisions it has already taken. That is where it started. Since then we have seen two public meetings and a rally at Yarralumla at which residents have vocally and in large numbers expressed their considerable concern about the government's proposals for the site.

It is also important at this stage to recognise the work of the Burley Griffin LAPAC, which was instrumental in putting forward a proposal for possible future use of the site, and that included a residential component. However, I think it is important to clearly distinguish that the residential component and the capacity of the actual brickworks site to be used as an interpretative site, an archaeological ruin, are not necessarily interlinked.

Where are we at now? We are now at a stage where the consultation process is fatally compromised. Any decision that the government takes based upon that consultation process, informed by the report of the consultants, will be lacking in legitimacy because residents feel, quite rightly, that their concerns have not been addressed. Residents wanted to know that the option of no residential development was one that could be communicated and considered in the consultation process. But what were the options presented to the community by the consultants? Did any of them include "no residential development"? The answer to that is no. All three options involved residential development.

A genuine consultation process—to use the minister's own words, a blank sheet—would have allowed for no residential development to be an option. But was that option presented by the consultants? No. Residents were asked to formally advise the government's consultants on their views about three residential options.

So, is this consultation process genuine? Is it devoid of a predetermined outcome? Of course it is not. The government needs to know that it has the confidence of the local community and indeed the broader Canberra community before it takes any decision based on the consultants' report. What is needed is a consultation process which has legitimacy and the support of the community. Labor will be supporting the motion moved this afternoon by Ms Tucker simply because it provides for a process which meets the sorts of parameters the community wants to see in relation to community consultation.

I would like to make one other point. Throughout this process serious consideration has not been given to what other options are available in relation to the preservation of the old Canberra brickworks. The old Canberra brickworks is a very important part of Canberra's heritage. It is the place where bricks were very made for many prominent buildings of early Canberra. Further, it is listed on the register of the National Estate.

As a community we have an obligation to protect and enhance these types of buildings, and to do so in a way that makes them available for people to see, enjoy and learn more about. But we are being told that the only way to fund the old Canberra brickworks is to build housing next to it. This government has said quite clearly through the options it has presented to the community, "We are prepared to spend money looking after the old Canberra brickworks, but only if you let us get the money from building residential developments next to it." That is what this government has said quite clearly in the three options that it has presented to the community to date.

But where has the community been given the opportunity to say, "We believe this should be funded directly by the territory without the need for residential development"? I know that is a costly exercise but it should be one open for consideration. It should be one of those options available to the community to have their say on. Let them have their say in an informed context so that they understand what the costs to the territory of upgrading the brickworks would be compared to the money coming from residential development. Let them know what the different options are. The government has not done that.

I do not like proposals that say, "We are going to hold a heritage building to ransom. We will not pay for its upgrade unless development is allowed next to it." That is what the government is saying in the options it has presented in the consultation process to date.

I am a little reluctant to take the word of the government in respect of the amendment moved by Mr Moore. I have not received any communication to date from the Yarralumla Residents Association indicating that what the amendment proposes is a preferred option for them. My office is checking that at this moment. In the absence of that, I cannot accept that the minister's proposal is a reasonable one.

The amendment does not include other key players in the debate. For instance, it does not include any reference to the people who are in charge of the consultancy. Who is in charge of the consultancy? Is it Planning and Land Management? No. Is it the Minister for Urban Services? Well, only indirectly. And certainly it is not the Yarralumla Residents Association.

The amendment does not include the infrastructure and asset management area of the Department of Urban Services. They are the people who have commissioned the consultants. Where are they? Quite clearly, they are just as important. Those officers are the ones who have been at the meetings. They are the officers who had to break up the shouting matches that occurred at the last meeting. They are not people from PALM.

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

MR CORBELL: Where is the Chief Minister's Department? Members would recall—I am sure that if they were not present they would have seen it on the TV or reported in the papers—that senior officers of the Chief Minister's Department were also present at the meeting and put forward their views about this strategic project for the territory.

I think those two omissions alone show that this proposal does not appear, on the face of it, to have been fully thought out, and the Labor Party is not prepared to support the amendment at this time. What we need is a process in which the community has confidence. We need to ensure that any decision that the government makes, informed by that process, is seen to have legitimacy. The current one does not. It should be stopped and a genuine process commenced.

MR RUGENDYKE (5.01): I will speak briefly on this subject. I must say that until the news reports of the fight I had not particularly followed the progress of this proposed development. And that is all it can be described as—a fight over heritage land in the ACT, a fight over buffer zones, a fight over broadacre plots, a fight over restricted access to recreation areas.

It is apparent to me from watching those news reports and from what I have heard here today that the consultancy seems to have been a failure. As the minister says, a vast amount of money has been spent on these consultants and it would appear it is a rip-off. But we live with that sort of thing. We see other consultancies that seem to be a rip-off. It worries me that these consultants make such an amount of money with these flawed processes.

The television footage of the fight contained the comment "Look, here's the referee." The referee was called in to separate the combatants and I must say he did a very good job. But it is a flawed process. Indeed, the comment was made on the news that if it was a fair dinkum process they would at least have put forward the option of no redevelopment. I totally agree that it was a blank sheet.

So while I have sympathy with Ms Tucker's motion, I think that, given the vast amount of money that has been spent, it would be inappropriate to abandon the current public consultation process. I think it would be more appropriate to allow that flawed process to continue to its conclusion and then look at what the report says.

I am not sure whether Mr Moore's amendment is a reasonable compromise. Ms Tucker approached me and suggested that she be given the opportunity to ring around Yarralumla Residents Association members in particular to see if she could identify anyone who may have agreed with this amendment. I think it is appropriate to give Ms Tucker the opportunity to do that. If need be, I will support a motion that the debate be adjourned to allow her to do that. However, it would be inappropriate to rush consideration of this matter. My initial intention was to not support the motion but to have a look at the amendment, which seemed to be a compromise, and I will do that.

I should mention that, irrespective of what happens to this flawed process, changes to the Territory Plan for residential and other land uses will come before the urban services committee as draft variations to the Territory Plan. That will be the appropriate forum in which to discuss any changes to existing uses. That is where residential could be knocked on the head if that is seen to be inappropriate.

MR SMYTH (Minister for Urban Services) (5.07): I will take the opportunity to speak to Ms Tucker's motion in order to correct a few misrepresentations that these debates always suffer from.

Where did we start with in regard to this proposal? Was it the government that came up with the idea? No, unfortunately it was not. In this case it was a joint proposal put to the government by a group from the Yarralumla Residents Association and the Burley Griffin Local Area Planning Advisory Committee. I know that some in the current management of the Yarralumla Residents Association have a different view of that but members of the YRA helped put together in July 1999 the Burley Griffin Local Area Planning Advisory Committee report entitled *Approaches to Conservation and Development of the Old Canberra Brickworks and Environs*. So this is where we started from.

In terms of consultation, this is the document put to us by the community that we started working with under the assumption that that is where the community wanted to start. This is the work that a group of people had put together and it seemed a reasonable point from which to start. We did not start with the blank sheet that Mr Corbell spoke about. Two groups with a mandate to represent the views and concerns of their local community came to us with their idea. We thought the idea was reasonable and we thought it was reasonable to work out how to progress something that might come from that. That was the starting point. I can show members the copy of the document if they want to see it.

Representatives of the group sought a meeting with the previous Chief Minister—I attended as well—and presented the report. A central tenet of the report is that the brickworks buildings themselves and their immediate environs are not to be covered with residential, commercial and/or tourist uses; they are instead to be preserved and interpreted as an archaeological heritage in a way that enhances the ability to tell the

important story of the brickworks development and its contribution to the buildings of Canberra. And that is not a bad place from which to start.

The report proposed that residential development that could, under the current controls, be located in the 8A area, be moved away from the brickworks. So the community representatives themselves said, "Move it further away to protect the archaeological heritage of the site."

This raises another point. Who put that control in place? Who said that residential could actually go in quite close and tight to the existing brickworks? The Labor Party. It was gazetted in 1993 in the Territory Plan, just like land at Tuggeranong Homestead which the Labor Party wanted to build on. So if we are talking about credibility of process here, ask those who put it in place—those who now so blithely walk away from it, as they always do.

Let us be clear on the issue. The proposal to investigate the possibility of residential development in areas currently defined as open space came from representatives of the local community. Those who support the motion that is before us today seek to take away the voice of the local community because the process does not deliver the answer they want.

It is curious, Mr Speaker: the government gets the process right only when it seems to meet the expectations of those opposite. Yet we use the same process all the time. Conclusions are sometimes reached that the government and obviously others in this place do not agree with, but that is the process that we use.

Some opponents of development in the area have said as part of this consultation that they did not know of these proposals or they did not support these proposals. That is fair enough, that is the role of consultation and that is why we undertake consultation. But to say that the consultation process is now tainted or inadequate is nothing but a nonsense.

Immediately following the community's proposal being raised with the government, contact was made with residents' working groups. Monthly meetings were held from April this year to further explore the ideas put forward in the report and the subsequent suggestion that Floriade might be located in the brick pits area. I note that the Yarralumla Residents Association newsletter of July 2000 listed a number of matters to be considered at its next meeting. One of those matters was to listen to proposals that Floriade be partly based at the brickworks site. So it has been out there for a long time and there has been a long period of discussion. The possibility of Floriade being located in the brickworks was openly discussed with the community from the outset.

These meetings were not just discussion groups. They worked on the consultants' brief, the consultation program and the management and timeframes for the process. It was an active involvement. More than 20 changes were recommended to the consultants' brief, and all but one were adopted. Additional public meetings were recommended, and that was included. Community representation was sought on the steering committee and two places were made available. So I am not sure how this process is flawed.

The same level of flexibility and openness characterised the process itself. Residents association representatives asked—I think they asked the Chief Minister—that the consultation be restructured. The time was extended and two additional meetings in the form of information sessions were added. They asked for it and it happened. Concerns were raised about alternative Floriade sites, and the terms of reference were extended to cover other possible sites. It was asked for and it happened.

So to summarise: the community brought forward this proposal; they contributed to and supported the consultants' brief; they agreed the consultation process; they helped form the steering committee; and they have had all their requests included. Mr Speaker, that is reasonable process. Those opposite do not like it when they do not get the result they sought, but that is not the fault of the process.

The only request that has been denied is that we stop the process or rule out any development. You have to ask why this was put forward. We think it came from a noisy minority who have denied others the right to be heard. That is what we saw at the meeting last Thursday. Others wanted to speak and talk to the motions, and they were denied that right. That is not democratic and it is an abuse of the process.

Some comments from other Yarralumla residents that I have received include: "I was frustrated and upset that a minority, who obviously had already made their minds up, nearly hijacked proceedings" and "The television news the next evening gave a very negative report and made very subjective statements regarding the outcomes of the meeting." Another said, "The verbal barrage you received was, I suggest, aimed at intimidating you. Let us hope the next meeting is more productive."

Mr Speaker, a significant number of residents at last Thursdays meeting were interested in a rational discussion—and I believe you were there and were one of them. These residents did not rule out the potential of some sort of integrated development. But they were talked over or shouted down by the anti-development group, and when they insisted on being heard one of them literally had to fight for that right. That is unfortunate and it is a shame that the process got to that stage; it was almost hijacked at that point.

The consultation is not flawed. The process is an open and honest one and many respondents were interested in exploring the options put forward, notwithstanding the press coverage. I have some documents here. A letter from one gentleman says:

> I recently submitted my subscription to the association. I have been a home owner and a resident of Yarralumla since '81. I am writing to record my support for the development.

I have two other different examples of the consultation. One community group was very interested in the proposal for APUs and volunteered that they did not attend the meeting last Thursday after the nastiness. Several others rang to ask further questions about what had been presented. So there is process and there is consultation out there.

The voices calling for a stop to the consultation are from those who will not accept any outcome that does not give them everything they seek. Planning always has two sides to it and there will always be those who agree or disagree. If you stop because a certain group make a lot of noise, that is not poor consultation—that is bullying.

The government will not support the motion because many people have invested a lot of time, right from the work of the community that culminated in the report of July 1999 through to the work that is now being done by the consultants and through the expressions of interest of other interested people.

I think Mr Corbell made the assertion that the whole thing was about money, that it is all about "we'll do this if you do that". Any moneys made from the sale of land go to a central fund. This government has never and will never hypothecate. It is not something that we believe in.

Mr Corbell: Except for emergency services.

MR SMYTH: I will take Mr Corbell's interjection. As a principle, we would normally not hypothecate. Mr Corbell asked why were no other options presented. I am curious to know where Labor's option is. Labor is amazingly interested in this area. Labor zoned it for residential in 1993. That is what Labor wanted. (*Extension of time granted.)* Labor confirmed in the Territory Plan in 1993 what I believe to be an older NCDC policy that was probably made about 1988. Labor confirmed that residential development could go on around the site. The community through the report in July 1999 and said, "We don't want residential that close. Push it out. We are willing to use up some open space to give a wider buffer around the brickworks." So the question is: where is the Labor option on this? If they are that interested, what work have they done? The answer is none—none whatsoever.

I understand that next Thursday the consultants will present the work that they have done. I think Mr Moore might have said that this was to be the final draft. Although it is the intention that it be completed, that may not be the case. But they will present everything that they have.

The amendment put forward by Mr Moore resulted from a meeting I had at lunchtime, in the lead-up to question time, with members of the executive of the Yarralumla Residents Association. They want a continuing dialogue with the government. One of the people who were present said that a lot of useful work had been done, they found some of the indicative figures and the costs of different components of any development to be useful, and they want to have that knowledge. So the amendment should not be thrown out and the motion as it stands should not be supported.

The process should at least be allowed to finish. I have already given an undertaking that a group will meet with the Yarralumla Residents Association before the next meeting, and I have offered another meeting after that time as well. Mr Corbell points out that the Chief Minister and I are not included in Mr Moore's amendment. I give a guarantee and an assurance that officers from both of our departments will also be at that round table when we discuss the outcomes of the next couple of meetings.

The process should continue. Community and government have invested a lot of money, effort and time in getting to where we are at now. To lose that would be just silly. There are some people who do not want this to go ahead and I accept that they have a right to that view. But, starting from the position that the community gave us, we have attempted to work our way forward so that we might preserve the brickworks for all time, for the

benefit of all Canberrans. Mr Speaker, the government will be supporting Mr Moore's amendment. If the amendment is accepted we could support Ms Tucker's motion, but in its current form we cannot.

Debate (on motion by **Mr Berry**) adjourned to a later hour.

LAND INFILL STUDIES

MR CORBELL (5.20): I seek leave to amend the motion standing in my name on the notice paper, to take account of the change in time of the day. The amendment deletes all words after "by" and replaces them with the words "close of business Thursday, 30 November".

Leave granted.

MR CORBELL: I move:

> That:
>
> (1) this Assembly requires the Minister for Urban Services to ensure that the Department of Urban Services provides all documents, notes and other papers concerning land infill studies since 22 September 2000 as requested by Mr Corbell on 20 October 2000 under the Freedom of Information Act; and
>
> (2) that the Minister ensures these documents are provided by close of business Thursday, 30 November 2000.

This is an issue that I am very concerned about. The government has had a considerable period of time to clarify its position in relation to urban infill in Canberra. The question has to be asked: what would the government have done in relation to urban open space if the Labor Party had not exposed their serious, deliberate and concerted investigation of utilising urban open space for residential development? Would the Chief Minister have made the same ringing endorsement, saying that urban open space was not up for grabs, if the Labor Party had not exposed the extent of the government's investigation in that regard? The answer would have to be no, and the work would be continuing.

The information I was fortunate to receive under freedom of information two months ago outlined a systematic investigation of areas of urban open space for potential residential development. There were no ifs or buts in relation to that documentation. It was quite clear what the agenda was. I was obviously concerned to see what further work in this regard had been done by the government since that time. I was particularly interested to see what further work had been done by the Infrastructure and Asset Management Group—I assume that is what they are called now—in the Department of Urban Services. That is the group responsible for land release functions in the territory and previously part of the Department of Treasury and Infrastructure.

For that reason, on 20 October I lodged a further freedom of information request seeking all documents, notes and other papers concerning land infill studies since 22 September 2000. The purpose of the request was quite clear. The purpose was to establish what further work had been done since I had received material on an earlier date. In particular,

I felt it was important for people in Canberra to understand what work had been done in other districts, particularly the inner north and the inner south, which were the areas cited as the next ones on the list for investigation.

On 26 October I received a letter from the FOI coordinator in the Department of Treasury and Infrastructure indicating that the request had been transferred to the Department of Urban Services as a result of the changed administrative arrangements and that my request had been forwarded to the FOI coordinator of that department.

I was further informed that the statutory date for a decision on access to the requested documents was 19 November. Mr Speaker, 19 November came and it went. Did I receive a reply by that date? I did not. That is unacceptable. The department broke the law. It was required to provide the information, or an explanation as to why the information was not forthcoming, by that date and it did not.

The Canberra community are sick and tired of waiting. The Canberra community deserve to know what is happening in relation to urban infill in our city, and they are entitled to learn what further work the government has undertaken in identifying sites for urban infill since that time. That was the purpose of the request.

It is particularly important, following the Chief Minister's commitment that no further work is being done on investigating areas of urban open space for possible development, that we have an opportunity to test that by seeing exactly what work is being undertaken by government departments, particularly the Infrastructure and Asset Management Group. That is the purpose of the motion today.

Because of the change in time today, I proposed an amendment to my motion, which the Assembly accepted, and the proposal now is that these documents be provided by close of business tomorrow. It is not an unreasonable request. The government has had over 30 days to respond to this request, and I believe it is time that they provided the documents to me, to the Assembly and to the people of Canberra.

MR MOORE (Minister for Health, Housing and Community Care) (5.27): This is a most unfortunate motion. Effectively, it puts an Assembly member above the law. Mr Corbell, as he is entitled to do, sought documents under the FOI process. Legislation sets out how that process should operate. If he is unhappy with the way that process is operating, then under law he has recourse to the AAT.

This motion says, "I do not like what is going on with that methodology. I am going to put myself above the law and above the process and use my Assembly power to get the minister to intervene in and override that process." What was the debate over the former Chief Minister about if it was not about process? It is okay for the Labor Party brothers to point the finger at the Chief Minister and say, "You did not follow due process. You went above the law. You broke the law." But when it suits them, it is a different story altogether.

It is extraordinarily unfortunate that this motion has been moved. I do not think any member of the Assembly should support this motion in its current form. I understand Mr Corbell's intention. He wants particular documents and, as a member of the Assembly, can request those documents or, through the committee system, order those

documents. There is a whole series of ways in which he can get hold of those documents, but he has chosen to go down the path of an FOI request. He is now seeking to interfere with the FOI process to have all the documents he requested delivered.

It may well be—I do not know—that under FOI legislation the officer responsible has determined that Mr Corbell is not entitled to some of the documents. Is the Assembly now going to overrule that, without even looking at the documents? To be fair, I probably should have drawn this matter to Mr Corbell's attention earlier in the day and suggested he withdraw his motion. I concede that that would have been a better approach, and I apologise for not doing that. I have spoken to Mr Corbell on many of these sorts of issues earlier. I have been caught up today, and I was reminded only a few moments ago that I said I would speak on this matter.

The crunch is that the minister ought not to deliver these documents tomorrow afternoon. They should go through the proper process. If Mr Corbell is unhappy with the process, then he should use the AAT.

Mr Corbell requested the documents on 20 October. My recollection of the Freedom of Information Act is that the documents should be delivered in 30 days. That they have not been is a matter of concern. If Mr Corbell's motion had said, "Will you investigate why they were not delivered in 30 days?" that would have been a perfectly reasonable request. I can understand why he is perturbed that they were not delivered within 30 days. I do not know why they were not when there is a provision in the legislation that ought to be complied with. I still believe this motion is the wrong way to go about it, and I think members should strenuously oppose the motion.

MR SMYTH (Minister for Urban Services) (5.31): Mr Corbell has moved his motion because he has not received documents. Mr Corbell put out a press release this morning in which the third paragraph says:

> "I am tired of waiting for Brendan Smyth's department to comply with the law in regard to Freedom of Information as I should have received the documents or a reason why they're being withheld by 19 November 2000", Mr Corbell said.

As Mr Moore rightly points out, there is a law and there is a process. Members should know this. I think most members do. I am sure Mr Corbell does. Section 61 of the Freedom of Information Act states that where a decision is not made within 30 days and no notice of decision has been received by the applicant then the decision-maker is deemed to have made a decision refusing to grant access to the requested documents. This enables the applicant to make an application to the AAT to have the decision reviewed. Section 61 also allows the AAT, on application by the agency, to allow further time for the agency to finalise the application. That is the law; that is the process.

As Mr Moore quite ably pointed out, Mr Corbell seeks to put himself above the law by using a motion in the Assembly. The curious thing is that Mr Corbell says in his press release:

> I should have received the documents or a reason why they're being withheld on 19 November…

This is the responsibility of the department. The request was forwarded, quite rightly, by the Department Treasury and Infrastructure to my department, because the IAM functions had come across to the Department Urban Services.

On 14 November 2000 Mr Alan Thompson, the chief executive of the Urban Services Department, wrote to Mr Corbell. I will read the letter, then table it. It says:

> Dear Mr Corbell
>
> I refer to your application of 18 October 2000 to the Chief Executive, Department of Treasury and Infrastructure, in which you sought access, under the *Freedom of Information Act 1989*, to the following documents:
>
> > "copies of all documents, notes and other papers held by the Department concerning land infill studies since 22 September 2000."
>
> This request has been transferred to Urban Services following the recent administrative changes.
>
> Due to these changes and the volume of work involved in your request I seek your agreement to an extension of time to process your application. I propose to provide this information to you by 18 December 2000.
>
> If you have any queries, please contact the Freedom of Information Officer on 62076195.
>
> Yours sincerely
> Alan Thompson

I table the following paper:

> Land infill studies—Request by Mr Corbell for documents pursuant to Freedom of Information Act—Copy of letter from Chief Executive, Department of Urban Services to Mr Simon Corbell MLA, dated 14 November 2000.

We have complied with the act. Because of the change in arrangements, we were unable to meet Mr Corbell's request. It is quite ludicrous that, having given the first array of documents, quite a stack of them, to Mr Corbell, we would then suddenly not give him the second set of documents. The request was about IAM, but when it was transferred to my department it involved all of my department, which includes PALM and other areas. The department is doing a search of all the documents that might relate to Mr Corbell's request.

There is nothing sinister here. Mr Corbell was informed of this decision. Yet he lashes out in a press release and moves a motion that puts his request above the law. He should follow the law, and he knows that well. We can all make our own assumptions as to why this motion has suddenly lobbed here. When the documents are ready, they certainly will be provided to Mr Corbell as requested. The government will vote against the motion.

MR BERRY (5.35): I listened to the argument from government members suggesting that Mr Corbell had put himself above the law. I think that is a little bit disingenuous. It is open to this Assembly at any time to order the government to do certain things, and the government can ignore the decision of the Assembly at its peril.

Mr Moore: You are going to order us to bypass the law, are you?

MR BERRY: It is not above the law for Assembly members to demand documents. In fact, for committees, there are specific provisions for demanding documents. There is nothing wrong with this Assembly making decisions about documents the government holds on certain matters. Elected members here have the privileged position of being able to have closer involvement in the decision-making process because of their position in this Assembly than members of the community who might want to use the Freedom of Information Act to seek documents.

It is always open to members, on behalf of their constituency, to move motions in relation to any matter in the Assembly. There is no law against that. So let us stop this nonsense of suggesting in a snide way that people have breached the law by asking for documents. The fact of the matter is that the documents have not been provided. It is open to any member at any time to move a motion in this place to require the government to provide documents. There is nothing wrong with that.

If the motion is carried, the government denies access to these documents at its peril. We are in a quite different position from normal people in the community who seek to gain access to documents via the Freedom of Information Act. It is disingenuous and dissembling for the government to put the argument it did. It does them no credit.

MR RUGENDYKE (5.37): I will not be able to support this motion. The Freedom of Information Act is very specific about the process that is to be followed in seeking papers under the act. My vague recollection of it is that the department has about 30 days to comply with a request. If that does not happen, from memory, the act calls it a deemed refusal or some such thing, and there are statutory steps that follow on in the event of a deemed refusal. If, after several other steps, the papers still have not been provided, the matter can be taken to the AAT. I think that is the appropriate process. For that reason I will not be able to support the motion. The proper process has been followed, apparently.

MR CORBELL (5.38), in reply: This is not a matter of putting myself above the law. As Mr Berry has rightly pointed out, it is within the scope of any member of this place to request documents. That is what I am doing. I am doing it in light of the fact that the Department of Urban Services has not supplied documents within the statutory timeframe. Mr Smyth has tabled a letter. The dated mentioned in that letter would not allow this Assembly to receive the documents and scrutinise them in this sitting period.

I believe that the urban infill issue is of considerable concern for many people in Canberra, and this Assembly should have the benefit of those documents so that before the end of the sitting year it can further question this government's intentions. That is a reasonable request for any member to make. That is the reason why I made my request and the reason why I am moving this motion today.

Urban infill is an issue of considerable concern. The government has said one thing, but it was caught out clearly doing another. I simply put the question to members again: would Gary Humphries have said the government was not looking at urban open space for urban infill if the Labor Party had not requested the original batch of documents that indicated 139 sites of urban open space as possible urban infill sites across Woden and Weston Creek? Would he have said, "We are not looking at them" if we had not done that? I think the answer is no. That is why we need this motion supported today.

Question resolved in the negative.

NOEL BUTLIN ARCHIVES CENTRE

MR WOOD (5.41): Mr Speaker, I ask for leave to amend my notice in the terms circulated.

Leave granted.

MR WOOD: I move:

> That, noting:
> (1) the significant role of the Australian National University in teaching postgraduate study and research;
> (2) the importance of the National Capital in maintaining leadership in the keeping of nationally significant historical documents;
> (3) the importance of the Noel Butlin Archive in collection and research
> the Legislative Assembly calls upon the Chief Minister to transmit to the Minister for Education, Training and Youth Affairs—
> (1) its regret at the proposal of the University to cut funding to the Noel Butlin Archives and its concern that this will result in the Archives being effectively inaccessible to the public; and
> (2) its request that the Minister call upon the Australian National University to uphold its responsibility to administer and maintain the Noel Butlin Archives Centre as Australia's most important archives of business and labour records, and a unique repository of information on the history of Australian working life.

I am sure members of this Assembly are aware of the debate about the Noel Butlin Archives. There has been quite a deal of discussion about them in the local media in recent times. The archives hold a very significant collection of business and labour records going back as far as 1820. There are 13 kilometres of shelving, compared with nine kilometres of shelving of similar material in the National Library. Mind you, kilometres of shelving is not necessarily a measure of the worth of anything. But this is a significant collection. A great deal of research work has been carried out over the years from material within the archives. People who come to Canberra and students within Canberra value that archive, and it has been the source of much research work.

Notwithstanding the name and the connotation some people may give to the word "archive", an archive is a living thing. It has to be sustained and it has to grow. An archive is not a place where documents are filed in remote and dusty places. It needs to be used, it needs to be encouraged and it needs to grow.

The problem with the Noel Butlin Archives is that the Australian National University, where it is housed, is reducing the amount of funding available for it. I can understand that universities around Australia are finding difficulty with funding, given the policies of the current Liberal government. Reduced funding is a great problem for the archive, which is not able to carry on in the way it needs to. It will not be quite as accessible for students and researchers. That is a loss to the university, a loss to students and a loss to the ACT.

It is a fair question to ask why we in this Assembly should be concerned about it. The ANU is funded by the federal government—not to sufficient degree, to be sure—and it is an independent body. It might be said that it has nothing to do with this Assembly. That archive is nevertheless an asset of the ACT. It is also an asset of the Australian National University. As it is an asset of the ACT, I believe we have a very real interest in how it is maintained. It is an appropriate collection to be housed in the national capital and in the national university of Australia. It is very sensible that it be housed here. We have a vested interest in ensuring that it remains well resourced.

We have commented in this Assembly before on issues over which we have no direct control. Members will have well in mind some of those issues that have been raised in the past. So we have set the pattern. We can comment on matters beyond the Assembly. I maintain that the archive is near and dear to us. Anytime you go through Acton tunnel, you go through the middle of the archive. You cannot see it, of course, but it is above the Acton tunnel. So it is really close to us in more ways than one.

I maintain that it is appropriate for us to call on the Chief Minister, as the motion does, to transmit to the federal Minister for Education, Training and Youth Affairs the terms of this motion. This motion refers the matter to the proper funding agency. We are saying to the federal minister, "We value this archive within the Australian National University as an asset in the ACT. You ought to fund it. It is your responsibility to do so." That is the purpose of the motion.

Simply put, Canberra and the university are proper places for this collection. It ought not to be diminished. Let us support it in the way we can.

MR CORBELL (5.47): I am very pleased this evening to rise in support of the motion proposed by my colleague Mr Wood. The Noel Butlin Archives are a significant, indeed unique, collection of the records and papers of industry and the trade union movement of Australia. Together, those two sectors have forged a considerable role in shaping the very history of the nation, so the records of major unions and major businesses are vital for historians to properly understand the forces, decisions, and views which shaped the history of our nation in relation to industrial relations policy, wages policy, social policy and industry policy.

The Australian National University has not only a significant asset on its hands in the Noel Butlin Archives but also a significant public trust in properly maintaining these archives. The decision by the Australian National University to cut funding to the Noel Butlin Archives, to reduce the level of archivists maintaining the archives, will result in the archives being less accessible to those people who wish to access them and study their records.

Obviously, the decisions made by the federal government in relation to funding of institutions like the Australian National University have driven decisions by the university council to downgrade the administration of this most important and unique national asset. It is not the first time we have seen the implications of federal government decisions in relation to funding cuts flowing through to important programs and research and important collections like the Noel Butlin Archives.

This year we saw the demise of another unique program at the Australian National University: the urban research program, the first and the only unit at an Australian university dedicated to the study of urban research policy. For the Australian National University, in the most urbanised country on the planet, to abolish that program was an appalling decision. If allowed to proceed, the decision to downgrade the administration of the Noel Butlin Archives will be an equally appalling decision.

It is important that we recognise that the ANU has a pre-eminent role in postgraduate study and research; that the national capital is the place for archives of significance such as the Noel Butlin Archives; and that the archives are a vital tool in research. The Assembly has a responsibility on behalf of the people of Canberra to voice our concern about downgrading the status of this significant collection.

I hate to think what the person the archives are named after, Noel Butlin, would think of a decision by the ANU to substantially downgrade access to this most important collection. Noel Butlin was a scholar of immense renown and reputation, a scholar of the humanities who was rightly given the honour of having his name appended to these archives. We as a community should express our concern that the ANU is failing in its responsibilities to properly maintain and provide access to these archives if it continues with the decision it has made to cut funding to the archives from next year.

I commend the motion to the Assembly.

MR STEFANIAK (Minister for Education and Minister Assisting the Attorney-General) (5.52): I note from Mr Wood's amended motion that he is following a correct process. That is certainly worth putting on the record. His motion notes certain matters and then requests the Chief Minister to pass on to the relevant federal minister the Assembly's concern and requests our minister to take up the matter with the Australian National University. As Mr Wood has this concern, he could write to Dr Kemp himself and ask him to do this.

Mr Wood: Yes, I will. But I am only one person.

MR STEFANIAK: He interjects and says he will. I am delighted that he will do that. I would caution him that even should the federal minister accede to the request it is ultimately a matter for the Australian National University. They have a budget to look to. They very much administer their own affairs. They have taken this decision. I do not know whether Mr Wood's plea will fall on receptive ears or ultimately on deaf ears. But if he wishes to make this point, that is a matter for him. Conversely, the university might take the attitude that if the Assembly wants to interfere in their affairs they can tell us how we should run our affairs. You always run that risk.

Mr Corbell mentioned federal cuts to universities. I remind him that it was Mr Dawkins who started the cuts and implemented them in a much greater way than the current administration has. Mr Corbell should perhaps look to his own party.

I hear what Mr Wood says. The process outlined in his motion is correct, but I question whether his motion will have any effect upon the university. The government does not oppose Mr Wood's motion. If he wishes to make the point, we do not have a problem with that.

MS TUCKER (5.54): The Greens will be supporting this motion. I thank Mr Wood for giving the Assembly the opportunity to put on the record our views on the plight of the Noel Butlin Archives. The archives are a significant source of primary research materials on Australian work history, culture and life. It is easy to appreciate the value to Australia of an integrated collection of records from businesses, the labour movement and industry and employer organisations engaged in industries ranging from shearing to the waterfront to farming, dating back to 1820.

I note also that the archive has more recently collected educational material concerning AIDS and is the only active national archive with this material. The archive is not only a source for understanding work and labour relations but also a window into culture and cultural change. It is the only national archive of its type in Australia and, together with the University of Melbourne Archives, forms the main repository for documenting the history of working life and Australia's commercial, rural and industrial heritage.

The archive is used by researchers at the ANU and from institutions interstate. It has been used to investigate native title claims. It has recently been a source for an exhibition on the changing role of sport. It still receives materials every week. Stuart Macintyre, Ernest Scott professor of history at Melbourne University, said recently:

> The Noel Butlin Archives are one of this country's greatest historical treasures. They consist of the records of major businesses and trade unions reaching well back into the 19th century. Future generations would find it hard to comprehend that such a vital resource should be squandered.

The motion notes "the significant role of the Australian National University in teaching postgraduate study and research" and "the importance of the national capital in maintaining leadership in the keeping of nationally significant historical documents".

This motion is about reminding the ANU that they are custodians for the public, and pointing out that this is a valued resource—a valuable public resource. What the motion does not mention is the context of this situation, which is that Commonwealth government funding for universities and for research has been dramatically, tragically cut during the current Liberal/National federal government's period of office.

I would like to comment further on this aspect of the archive. The results of the federal government's approach to education can be seen clearly in the Noel Butlin Archives case. According to the Friends of the Noel Butlin Archives, since 1994 staff levels have been cut from six full-time archivists and two support staff to 2.5 archivists and one support staff, with an operating budget of $250,000.

The university first proposed to close the archives and disperse the collection at the end of 1997, following Commonwealth budgetary cuts. After outcry from people who use it and from the Australian Society of Archivists, the archives were retained but not with a security which would create confidence. Instead, funding was offered as three-year bridging finance, together with an offer of $1 million if the archives could gather the same amount in donations.

The final part of the ANU administration's plan was that the archives would raise $100,000 per year from charges made on researchers and depositors. The Friends of the Noel Butlin Archives say that while this plan has kept the archives going it was never likely to be achievable. They say that no other similar cultural institution has been able to fundraise that much and that the target of $100,000 to be raised from charges is unrealistic.

This sad tale exemplifies a shift in the purpose of universities from being public resources. It reflects a profound misunderstanding of the role of independent research, distinct from profit-making, to a healthy society and democracy, and indeed to a healthy economy. The ANU reminds us on their web page that they were "founded by the Australian government in 1946 as Australia's only completely research-oriented university". The web page also states:

> Fundamental to the distinctive character of the University has been the continuity of the block funding to the Institute of Advanced Studies, vital for the investment in long-term research so critical for continued academic distinction.

Here we are facing a question of investment in long-term research, and it could well be seen as critical to the academic distinction of the university. It is a shame that the ANU has not yet recognised the value to itself and that it does not seem to be able to appreciate the value to the broader academic community of supporting the archives as a professional resource. This archive is worth keeping, and worth more with secure and adequate funding to retain staff on the premises.

In a media release of 28 September, the university's public affairs division presents a drop in visitor numbers—as a sample, they show 1,416 visitors in 1993, 1,246 in 1994, 819 in 1997 and 231 in 2000—as part of its argument that sadly the archive must be downgraded. Of course the release does not call it that. It is called "an efficient arrangement" for access to the material.

In a background paper on the archives dated 5 October, however, these visitor numbers are put in a different context. From 1990 to 1994 visitor statistics included visitors on tours. Hence, there appears to be a sharp drop in 1995 when the visitor numbers no longer included tours. Since statistics on visitors apart from visitors on tours have been kept, since 1998, the numbers have declined. However, the visitors to the archives to 27 September this year numbered 581, which is substantially more than the 231 reported by the public affairs unit.

Without getting into quibbling over statistics, I think it is worth noting that there was a notable drop in visitors in 1998—151 fewer—after the university's much publicised plan to close the archives in 1997. The number of visitors increased slightly again—by 10—in 1999, and this year is not complete, obviously. These statistics indicate to me not

that there is a decline in academic interest in the collection but rather that perhaps the uncertain future of the archives has restricted access to this collection. If you were a researcher initiating a three to five year research project and you knew that the university was intent on winding back the archives, perhaps to the extent of closing the archives altogether, you may choose not to use the archives. By making access uncertain, difficult or impractical, that material is lost to researchers and, through their work, is lost as a source of reflection to Australians as a group.

As a parliamentarian, as a representative of members of the community, by supporting this motion I would like to try to pass a strong request to the university to reconsider their current direction on the archives. But I also recognise that although the university is not fighting the trend, at least in public, it is also not acting alone. We need to realise that this situation is a consequence of the federal government's failure to fund universities adequately. Common wealth in many forms is at risk, and this is another example. I would also suggest that other members in this place need to see the consequences of failure to adequately care for such public goods.

Question resolved in the affirmative.

Sitting suspended from 6.02 to 7.30 pm

LEGISLATIVE ASSEMBLY—NUMBER OF MEMBERS

Debate resumed from 29 March 2000, on motion by **Ms Tucker:**

> That this Assembly:
> (1) agreeing that the ACT community should have legislative control over the structure of their Legislative Assembly;
> (2) agreeing that the size of the Assembly should change in proportion to changes in the population of electors in the ACT;
> (3) agreeing that a ratio of 1 Member per 10,000 electors, as recommended in the Pettit Review of Governance of the ACT, is an appropriate ratio of Members of the Assembly to the number of electors;
> (4) agreeing that the Assembly should continue to have an odd number of Members; and
> (5) affirming the principles of the proportional representation (Hare-Clark) electoral system laid out in section 4 of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994;*
> requests the Chief Minister to –
> (1) undertake discussions with the Commonwealth Minister for Territories to achieve –
> (a) amendments to the *Australian Capital Territory (Self-Government) Act 1988* to devolve to the Assembly the power to determine the number of Members, or if this is not possible;
> (b) a regulation under section 8 of the *Australian Capital Territory (Self-Government) Act 1988* to fix a different number of Members;
> with the aim of fixing the number of Members to be elected in the first election after 2001 as the largest odd number that is less than the number of enrolled electors at the time of the 2001 election divided by 10,000.

(2) prepare an exposure draft of amendments to the Electoral Act 1992 to establish a process for determining the number of electorates and the number of Members per electorate for an enlarged Assembly, for consideration by the Assembly.

MR MOORE (Minister for Health, Housing and Community Care) (7.33): Mr Speaker, I am delighted to rise to speak to this motion. I have to thank Ms Tucker for sending me a copy of her foreshadowed amendment to the motion. I rise to oppose that amendment and speak in support of the motion as it stands.

The motion as it stands is a very sensible motion. The matter has been through a huge amount of community consultation. It is worth remembering that it was considered by Professor Pettit in a broad-ranging inquiry and that inquiry recommended, as we can see from this motion, that we proceed to having a ratio of one member of the Assembly for every 10,000 constituents. I think that that is a very sensible approach.

Clearly, as the motion indicates, it is not within our power to make this change, but it is something that ought to be within our power and something that we should move to do. We do not need any more consultation. After Professor Pettit brought down the report of his inquiry, the matter was referred to an Assembly committee chaired by Mr Osborne and that committee undertook a huge degree of consultation and discussion on the wide-ranging issues of governance that Professor Pettit dealt with.

Mr Speaker, we have all had the opportunity to look at the results of both of those inquiries and to draw our own conclusions. What we have now is a question of political will. The reality is that the Labor Party and the Liberal Party do not want to be the ones to take the baton and run with it because there is a perception that it is politically unpopular to want more politicians in this place and somebody might point a finger at them and say that they are the ones that want more members.

When are we going to start making sensible decisions about the needs of the place and the needs of the community in terms of democracy? It is quite clear to each and every member here that we have inadequate representation. We have inadequate representation in two ways.

Mr Wood: Speak for yourself. I am adequate.

MR MOORE: Mr Wood interjects that I should speak for myself as he is adequate. I have to accept that as a reasonable interjection. It seems to me—

Mr Wood: I am more than adequate.

MR MOORE: There you are! It is not very often that I give you that; I must be feeling a bit more mellow this evening.

MR SPEAKER: Order! Members may not promote themselves beyond their capacity!

MR MOORE: That is a risky statement to make, Mr Speaker.

There are two main reasons for that. The first one is that each and every member here knows about the difficulty of keeping up with our constituencies and working with them to meet the issues there and each and every one of us could work out things that we could do to work better with our constituencies. That is the first one.

The second one is the way that this Assembly works. This Assembly has done a tremendous amount of work in terms of its committee system. In each and every one of the Assemblies, one of the hallmarks has been an extraordinarily positive, extraordinarily powerful and extraordinarily active committee system. Mr Speaker, there is no doubt that pressure is felt by all members, but by a small number of members in particular, and that will always happen when we have one of the major parties forming government in a minority situation, particularly with the number of members that we have. Mr Hird covers a wide-ranging number of committees and you, Mr Speaker, probably would be one of the few Speakers in Australia to serve on committees other than the house management committees.

MR SPEAKER: The only Speaker.

MR MOORE: It does have some advantages, Mr Speaker, but that should be a matter of choice rather than of compulsion. We really ought to be facing reality, working in a bipartisan way and saying, "Yes, we know that we do need to increase the numbers." We should not have to wrestle with this situation on a regular basis, whoever is in this Assembly. We should tie the numbers to a ratio, but the numbers of the Assembly should remain uneven. That is something that we could work out if the power were transferred to us by the Commonwealth, as the motion asks our Chief Minister to seek.

Mr Speaker, when I stood to speak, I probably should have clarified that I would be speaking in my executive member capacity as an individual and as an Independent, rather than on behalf of the government. They have their own view.

Mr Speaker, the reality is that we should work together on this matter and we should deliver what we know to be the right thing. The right thing is to have an adequate representation, to tie it to a ratio, to put in some parameters whereby elections always deliver an uneven number of Assembly members, and perhaps only ever jump by two or four so that we are not constantly changing the number of members.

It is something that could be handled easily in an administrative way and it is something that could be handled easily in terms of party politics. It just requires us to take the politics out of such an issue. Mr Speaker, there are other issues like this one that we deal with. We have handed the issue of remuneration to the Remuneration Tribunal because each and every one of us knows that every time there is any suggestion that politicians be paid more the response is horrific. I recall and I am sure that Mr Berry recalls when a member of this house was paid $40,000.

Mr Berry: And a minister.

MR MOORE: I think it was the same for a minister as for all other members; all of us were paid $40,000. At the time we recognised that that was unfair; but the very first time that somebody suggested that there should be a pay rise for members of the Assembly there was, of course, media criticism and public criticism. Looking back on that, it was

patently unfair and patently stupid. Some might think that $40,000 was over the top for some of the ministers at the time, but I do not think so. I think that they were terribly underpaid for the work that they did and the responsibilities they took on. Members should remember that there was the extra responsibility at the time of breaking new ground in a very unpopular self-government system.

There are ways of dealing with these things. The appropriate way is to take them out of constant debate in the Assembly. Yes, move the power to the Assembly, but implement a strategic system. That strikes me as being the thinking behind the Pettit committee in dealing with that approach.

Mr Speaker, if I may, I will now address the amendment that Ms Tucker has foreshadowed. The amendment asks the government to go out and consult on the matter. There is somewhat of an irony there because Ms Tucker constantly criticises the government for the way they consult.

Ms Tucker: Sometimes I congratulate the government on how they consult.

MR MOORE: Ms Tucker interjects that sometimes she does congratulate the government on how it consults. I will have to go back and look at that—

Ms Tucker: Yesterday.

MR SPEAKER: Order! You will have the opportunity to respond, Ms Tucker.

MR MOORE: I do not recall such a comment, although Ms Tucker has indicated that she even said it as recently as yesterday.

Mr Speaker, it seems to me that one of the things that we have to learn to do here is to consult properly. We will go back to Yarralumla, I am sure. Being quite frank, I think the consultation was entirely inadequate. I have criticism of the consultation in some other areas. But I think that we do have to come to the point where we recognise that there is a limit to the number of consultations we ought to have, particularly in a hierarchy of consultation. We have been through a consultation process associated with an Assembly committee and it seems to me hardly appropriate to go out to yet another process. It can only be effectively a lower level consultation process.

I think that it is worth considering by us, not just for this situation but generally, at what point does the process of consultation get undermined by yet another process of consultation. It is simply not necessary, Mr Speaker. Each and every one of us here knows what needs to be done.

Ms Tucker: They voted for more consultation; talk to them.

MR MOORE: Consultation is important. I hear Ms Tucker saying that both of the parties want consultation. We must remember that in policy implementation terms there are three ways of going about your actions. One is to go for it, one is to oppose it and one is to delay. One of the most effective methods of delay is consultation. That is not to say that consultation does not have an important part in policy implementation as well; of course it does. But it is also an effective way of causing delay.

Mr Speaker, I have to say that I would be very comfortable about calling on the government to do so quickly so that we can deliver 21 members after the next election. I would be very comfortable about that, remembering that it would not affect my electoral prospects one way or the other, because we are talking about a seven-member seat being the likely outcome and I am already in a seven-member seat.

Mr Quinlan: However, it would decrease in size, Michael, and the quotient would decrease.

MR MOORE: If it decreased in size, that probably would make it worse for me rather than better. I think that it would have no impact on me at all. However, I have to say that it probably would have some impact on other parties. For that reason, it may be appropriate for us to apply it to the election after the next one. It does not worry me; I think that it should be done immediately. But Ms Tucker's motion really sets it up for the following election and I am happy to accept that.

Mr Speaker, this proposal is fairly straightforward. The motion as it stands should be supported. It is a very sensible motion and the process is an appropriate process. There is no need for further consultation. If we are to have further consultation, I would suggest to Ms Tucker that we ought to seek the power from the Commonwealth to do so and then allow the consultation process to occur after the power is with us and it becomes much more of a reality. I think that that is the process that we should follow. We have a good motion in front of us and I think all members should support it.

MR STANHOPE (Leader of the Opposition) (7.45): Mr Speaker, I think that this is an appropriate time for me to move the amendment circulated in my name. I move:

> Omit the following words:
> "should change in proportion to changes in the population of electors in the ACT;
> (3) agreeing that a ratio of 1 Member per 10,000 electors, as recommended in the Pettit Review of Governance of the ACT, is an appropriate ratio of Members of the Assembly to the number of electors;
> (4) agreeing that the Assembly should continue to have an odd number of Members; and
> (5) affirming the principles of the proportional representation (Hare-Clark) electoral system laid out in section 4 of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994;"*;
> substitute:
> "is a matter of public interest.".

Mr Speaker, the Labor Party has considered Ms Tucker's motion in quite considerable detail. We are aware of the debate that erupts in Canberra from time to time around whether the membership of the Assembly is appropriate, whether an Assembly of 17 people does serve the people of Canberra optimally. Whether we would be better served by a parliament of a different size, of a different constitution, of different electoral arrangements is an issue that has been alive for quite some time.

It was the subject of review by Pettit. Mr Moore referred to that in the speech that he has just given. This issue has occupied the community to some extent and has occupied, I am sure, the thinking of each of the parties and the members present in this place and, from

time to time, does generate some interest within the community. There has been some interest around the subject over the last couple of weeks as a result of the debate that has been generated on this occasion. In looking at the form of Ms Tucker's proposal, the Labor Party is of the view that it would be appropriate to seek to determine the views or the attitudes of the broader community in relation to the question of a change in the size of the Legislative Assembly.

I have to say that previously the Labor Party has not been convinced that there was a case for an increase in the membership of the Assembly. Mr Speaker and I did join Mr Osborne on a select committee that inquired into the outcomes of the Pettit review. We did have different viewpoints on that occasion. I put the point in the report on that that I did not believe that the case had been made at that time and that I had concerns about the extent to which the people of Canberra had come to terms with self-government.

We all know in this place that the road to self-government was rough and rocky, that it did meet with some resistance, that there has been and continues to be some residual concern about the move to self-government in the ACT. We of the Labor Party have always been concerned to see self-government bedded down and gaining as much acceptance as parliaments or politicians ever gain in a community. It was a matter of some concern to us.

There were issues around an appropriate configuration in relation to electorates. We are now fully accepting, as is every other member of this place, I am sure, of the Hare-Clark electoral system. It does impose certain quite particular or specific constraints and difficulties on the major political parties. We are quite prepared and happy to seek to deal with those as a political party in this jurisdiction.

I make those comments really by way of some background. There has been considerable debate about this issue. The Labor Party is today signalling that it is prepared to shift somewhat in its attitude to the question of the appropriate size and configurations that might apply to the Assembly. Mr Speaker, I believe I report you appropriately when I say that you dissented on this aspect of the select committee's review, that you were of the view that we should move to 21 members. As I said, Mr Osborne and I were not disposed to make that recommendation at that time.

I think that each of the major political parties in this place acknowledges that there are some difficult political issues and constraints around a decision to increase the number of politicians and to increase the size of the Assembly. I have noted with interest the views that the Chief Minister has expressed on this subject over the last week or two.

A particular comment of the Chief Minister's I noted was that the Liberal Party would be disinclined to pursue an increase in membership at this time in the absence of some understanding of what the broader community thought or felt about the prospect of an increase in the membership. I saw the Chief Minister reported as having said that he would like some other source of advice, some other indication of the feeling within the community about this issue.

Our decision today to support the inquiry in the terms of the amendment that I have proposed is a commitment by the Labor Party to join the Liberal Party in seeking out that community advice or opinion on this subject. We are here signalling that we are prepared to endorse and support a form of consultation with the community with a view to coming to some understanding of what the broader community thinks about a more desirable membership or size for the Assembly.

That is what we are here today signalling in the terms of the amendment I have moved. We are prepared in a bipartisan way to join the Liberal Party and the Greens at this stage, and I hope other members of the Assembly, in at least endorsing a stratagem of consultation for seeking to determine the views of the broader community and whether they would accept the views of many members of this place that there are serious constraints on our capacity not only to fulfil our roles within this place as parliamentarians, but also to fulfil to the extent that we would like some of our broader constituent or electoral responsibilities.

It seems to me, and I think everybody in this place would agree with me, that there is significant pressure on the committee system. Mr Moore alluded to this in his address. I know that this is an issue on which Mr Hird has some heartfelt views and opinions, as do you, Mr Speaker. But the committee system within this place certainly does strain at the seams from time to time and I am of the view that we do not through the committee system deliver the optimal results that I would hope we as a parliament would deliver in relation to our capacity to service the inquiries and the committees that we seek to service as members of this place. Similarly, I am concerned at our capacity to meet fully the needs of each of our constituents and of the constituent groups. I think there are genuine issues there in relation to the capacity of members of this parliament, with its limitation of 17 members, to meet some of their obligations as parliamentarians.

Over and above that, there is a range of other issues, some of which I have alluded to, such as the fact that self-government has had a rocky path and the fact that there are very good reasons for parliaments not to push ahead with changes or reforms of this nature if, in doing so, they are flying in the face of public opinion and public sentiment. It is a legitimate issue which this Assembly needs to have full account of before going down this path. It would be counterproductive, perhaps counterproductive in the extreme, for this Assembly to pursue a path of additional members if it was a path that was vigorously opposed and resented by our fellow citizens, by our constituents.

That is the position of the Labor Party. As I said, the Labor Party has signalled by this amendment that it is prepared to shift quite significantly to the point where it is prepared to say that it is happy to engage in the debate, that it would like the government to institute a process of consultation and that it is prepared to act in that sense in a bipartisan way. This is not a scheme for a stratagem or a design by the Labor Party to seek to force the Liberal Party, the government, into a position on this issue. We are simply asking the government to facilitate a process of consultation. We are prepared to accept that there are some political issues that need to be addressed by each of us in that regard. I am here giving an undertaking that we will approach this proposal, this process, in a bipartisan way.

MR HIRD (7.55): Let me say at the outset, Mr Speaker, that it was refreshing to hear the words of the Leader of the Opposition in respect of this matter. It is sad that his party did not adopt the same attitude some years ago. The Liberal Party will not be supporting Ms Tucker's proposal, but the motion and the amendment of the Labor Party will be spoken to by my colleague the Deputy Chief Minister.

The committee system, as Mr Stanhope rightly said, has been strained. I have borne the brunt of that as a member. I would like to say for the record that I have appreciated the tolerance and courtesy shown to me by the Labor Party and the crossbench members for my efforts in recent times. Mr Berry is not with us at the moment, but he wanted to ask questions about certain annual reports and pressed for it. As the chair of the education committee would bear out, I was needed there to make up a quorum at the same time as advertised public hearings of another committee were being conducted and I had to criss-cross between the meetings. That has been done on numerous occasions to accommodate the processes of this parliament. It is only through the goodwill of members of this house that that can be achieved, but it has not been easy.

Let us look at the committee system, which is the backbone of this parliament. The committee system evolved out of historic links between the advisory nature of the first and second House of Assembly and the first Legislative Assembly. They advised the federal government through a committee system which traversed both state and local or municipal issues. The situation has evolved even further to one in which this legislature is allowed to make laws for the good order of the people of this territory. As someone who has been involved in local politics since 1974, 26 years, it has been a delight for me to have been a part of that unique situation, coming into this place with a young Greg Cornwell and a young Trevor Kaine.

I might add that it was refreshing to hear the Leader of the Opposition acknowledge that democracy should rule in this territory. Democracy is about the right of local residents to access their respective members, whether they be from the crossbench, the Labor Party or the Liberal Party, on municipal or state matters. At the moment, and I speak with some authority, I am unable to fulfil that very serious requirement on numerous occasions.

Members are elected by their constituents and then put on committees or made ministers, the Speaker or whatever, but priority certainly should be given to their respective constituents. I have not had that luxury for the last 2½ years. I have had to put that aside to undertake the heavy workload that I have had. However, I am not complaining. I hope that members of this place will not see it as a whingeing when I say that I have not been able to handle the work. I regard that workload as a challenge and attack it with relish.

Mr Rugendyke: And you do it well.

MR HIRD: As I said earlier, Mr Rugendyke, I appreciate the assistance and support I get from those who understand my position. In particular, Mr Wood would appreciate my difficulties. It should be understood that democracy does come at a price. I hark back to 1986 when a report was brought in by the then advisory body, the second House of Assembly, and endorsed by the Independents, the Labor Party and the Liberal Party.

There was a unanimous decision to bring in a form of self-government which was very similar to what we have today and which did identify a membership of 21. I repeat that the decision was unanimous.

If you look at the letters to the editor in today's *Canberra Times*, you will see a letter from a reader who argues that there is no way that we need a municipal government per se; we need a government for state and local matters. I would go so far as to say, as I did back in 1985, that what we have before us today is the forerunner to regional government. The fact is that the ACT is in the centre of 600,000 people and its health, medical and court systems service the full region, rather than just the 311,000 residents of the ACT.

The Pettit inquiry analysed the situation fairly and properly and determined, as did the former House of Assembly in 1986, that there should be 21 members, giving a ratio for how that membership should be arrived at. It is sad, if I may just touch on a negative, that the select committee on governance, of which you were a member, Mr Speaker, did not grasp the nettle at that time. However, let us look forward, not backwards.

As I said in my opening remarks, it is refreshing to see the Leader of the Opposition proposing an amendment and moving forward. As we move forward, we should always remember that this matter is not about the grandeur of a legislature with a small number of members; it is about the grandeur of a legislature which is there to represent its people. To do that it has to have appropriate arrangements and membership so that they can be properly heard and represented.

As the Leader of the Opposition has said, a bipartisan arrangement is needed for the membership to be increased to 21. No-one in the community would ever argue that there should be more members. Mr Rugendyke, as an ex-policeman, would know that you do not need a policeman until you are robbed. It is a bit the same in my profession; you do not need a politician until a tree is falling over, a footpath is breaking up or there is some alleged infill program. We need to put it right so that constituents can have better access to their local members and have better representation. After all, we are here at the will of our constituents.

MR KAINE (8.05): I have listened to this debate with considerable interest. I have been particularly interested in the remarks about bipartisanship. I know that you, Mr Speaker, with great respect, have advocated that there should be more members of this place and that that has long been your view. I am going to put forward a proposition for fewer members. It will be interesting to see how far it gets. In the interests of bipartisanship—

Mr Quinlan: Do you have anybody in mind?

MR SPEAKER: Order! Mr Quinlan, I am not going to get cross with Mr Kaine for advocating that there should be fewer members and you should not, either.

MR KAINE: I put forward this proposal for serious consideration in the interests of bipartisanship. It has long been my view that we could do with fewer, not more. I think that that is a proposition that would appeal to the general community out there. But it does require a bipartisan approach. My proposal would be that we reduce the number of members to 15, three electorates of five.

Some of you are going to ask how you can have a government if you have only 15 members and the governing party has maybe only six of them and has to form a cabinet of five or four and have to man all the committees. The answer to that is very simple: do away with the government and opposition concept and adopt a concept of 15 members all working together to achieve good government for this territory. Forget party divisions; forget governments and oppositions. You can still have ministers if you want them, but they do not have to be—

MR SPEAKER: Order! The house will come to order. Mr Moore will stop embracing Mr Kaine.

MR KAINE: I am quite prepared to work with the current minister for health, and I emphasise "current", because under my proposal there would not be a government and an opposition in the traditional sense. I would envisage the system working in this way: we would have five standing committees, which we pretty much do now. After an election, the Assembly would meet and, after electing the Speaker, it would then elect the members of the five standing committees. Those standing committees would go away and consider who they wanted to be their chair.

You might have two committees with Labor leaders, you might have two with Liberal leaders and you might have one with a member of the crossbench as the leader, but those five people would constitute the executive. You would then have a situation where you do not have a Liberal government and a Labor opposition or vice versa. You would have 15 members of the Assembly, all of whom are contributing equally to the decision-making processes, and any five of the 15 can become the executive.

Why, then, do we need 21 members? If you did that, you would have a Speaker and five members of the executive; that is six. You would still have nine people to man all the committees and do all the work for which, at the moment, one poor backbencher has to carry the burden on the part of the government.

It seems to me that, instead of having six or seven members in government, four or five sitting in opposition and the rest sitting on the crossbench and having virtually no involvement in the executive decision-making, it would be a far better proposition to have the full use of all the facilities, capabilities, experience and background of all the members of the Assembly in the executive process. Why exclude at least two-thirds of them from the executive process?

I have never had anybody explain to me why we have to have the set-up that we have now. When the federal parliament set up the territorial government in 1989, I do not believe that they envisaged necessarily that we would have this Westminster system with a government and an opposition, all the trappings of office of ministers and all of those things. Despite the best endeavours of leaving it to us to sort it out, what did they get? They got a miniature Westminster system. The result is that three-quarters of us sit around here and the government sits over there.

When we are debating this question of how many members there should be in this place, why do we always begin with the presumption that there is a need for more members? Frankly, Mr Speaker, I am not convinced that that is necessary. If we were to work in

a cooperative fashion instead of a confrontational fashion, you could easily do it with 15 people. You would still have an executive. You could still call them ministers and you could still send them off to ministerial council meetings, heads of government meetings and all those flash things that we get involved in when really what we are here to do is to govern the Australian Capital Territory.

We can still do all of that if we want to. But the question is: in the interests of bipartisanship, would the Labor Party and the Liberal Party support such a proposal? If they would, let us have their hands up now and, after we adjourn tonight, let us go and sit in the cabinet office upstairs and figure out how we would make a system with only 15 members work in the interests of this community and in the interests of bipartisanship. If we cannot do that, let me not hear again a single mention of the word "bipartisanship" in the debate tonight.

MR QUINLAN (8.12): Let me start by acknowledging Mr Kaine's contribution. Given his long years of service in this place, I think that we have to bow to his learned experience, having held many positions within this Assembly, including that of Chief Minister. I guess that his years here have led him to the conclusions that he just espoused while on his feet. I do think that there might be a few little problems along the way in terms of competing interests in the setting up of the committees, but it is a most noble sentiment that Mr Kaine has expressed here tonight. I think that that is all that should be said of it.

I listened to Mr Moore and I found myself agreeing with him to some extent, which is not a position I would like to be in too often. He talked about doing the right thing and taking the politics out of it. Of course, I would have to be convinced that there is somebody in this place who is capable of thinking about this proposition without doing a little mental calculation as to what impact it might have on them or their own particular group. I would still wish to be convinced of that.

I do concede that there are problems with the committee structure and the amount of work there. I am a committee chair. By the good graces of Ms Tucker, I have chaired a quite substantial inquiry. I have chaired a select committee on superannuation. The chair ends up doing a lot of work in relation to the preparation of reports. In particular, a couple of the reports brought down in this place by committees I have chaired have taken a considerable amount of work. I have also been involved in estimates committees and we are now involved in the draft budget process.

Certainly, all of those activities mean that you cannot do anything other than perform suboptimally, given the workload and given the amount of material you have to observe. Equally, I think that we should recognise that it is probably difficult for ministers because of the spectrum of portfolios. Everybody has just about a poker hand of ministries to look after. The ministry is about to be shrunk to four people. I imagine that it is just as difficult for ministers to absorb all of the information associated with the spectrum of portfolios as it is for shadow ministers who have a number of areas that they have to keep up with.

I support wholeheartedly Mr Stanhope's call for consultation on this issue, but I think that the consultation will have to be conducted very carefully. We have had self-government for 11 years and after 11 years there is emerging grudging acceptance of the

fact that we have self-government. I do believe that an all-out push to increase the number of members in this place would be likely to set back that process of acceptance.

I do not believe that the masses out there in Canberra are ever going to accept self-government and embrace it fully. Politicians will always be amongst the least popular citizens of the community. However, I do sense that there is a grudging acceptance and I do counsel members not to push this issue too hard out there. Certainly consult, but let us do it softly, softly, otherwise we will put back the image of self-government within the territory.

I might just close by saying that there is one way that this government could immediately ameliorate some of the problems that exist, that is, by providing considerably more in resources to the non-executive members of the Assembly. The non-executive members of the Assembly, whether they be Independents or part of the opposition, also have to absorb a considerable amount of information.

We have within the Assembly the capacity to improve considerably the operation of the place by providing to all members of the Assembly sufficient resources to handle the work that they have, whether they be performing the role of a shadow minister, whether they be performing the role of committee members and chairs and whether they be tending to the very many constituent inquiries and problems that they receive.

I do think that, while we are consulting and while we are thinking about the number of members that we ought to have in this Assembly, we ought also to think about how we resource the existing complement of members within the Assembly so that they can perform the job that is allotted to them and is expected of them by the people of the ACT. Mr Speaker, I do recommend that we do consult on this particular issue, but that we do it in a softly, softly mode.

MR SMYTH (Minister for Urban Services) (8:19): Mr Speaker, if I am reading this proposal properly, after the foreshadowed amendment is in place and Ms Tucker's motion has been amended by Mr Stanhope, it will read:

> This Assembly, agreeing that the ACT community should have legislative control over the structure of the Legislative Assembly and agreeing that the size of the Assembly is a matter of public importance, requests the Chief Minister to undertake discussions with the Commonwealth Minister for Territories on the possibility of amending the Australian Capital Territory (Self-Government) Act 1988 to devolve to the Assembly the power to determine the number of members and undertake public consultation on the desirability or otherwise of expanding the size of the Assembly.

Mr Humphries and the government have said for some time now that the only way that this debate could go forward was through a bipartisan approach, that unless the majority of the members of the Assembly, including the two major parties, were willing to put aside the political point scoring and work together in talks with the community on this proposal, it was doomed to failure, and would accept the generous nature of Mr Stanhope's offer tonight that the Labor Party has fundamentally shifted its position and will work with the government on this matter.

My initial comment on Ms Tucker's motion was to be that, for somebody who is always so keen on public consultation going ahead, perhaps she should have gotten out and done the consultation on her own. It is quite interesting that she floats an idea and then asks the government to do the work for her. I would have followed that up by simply saying that, if Ms Tucker wanted that to happen, she would have had to get her colleagues on the benches opposite to agree, but it would seem that Mr Stanhope has been able to achieve that on his own. I welcome his offer and his words that are now on the record that this can only occur with a bipartisan approach and that the Labor Party is willing to back that bipartisan approach. That is what Mr Humphries, on behalf of the government, has been calling for for some time.

Mr Speaker, if the foreshadowed amendment gets up and the version that I have just read out, which I think accurately reflects what Mr Stanhope intends to happen, the question then is: in the morning will Mr Stanhope and Mr Humphries put out a joint press release on behalf of the Assembly and do the media together to ensure that there is a bipartisan approach, because that is the only way it can happen? If there is any point scoring or games with this matter, all it will do is make us look like a bunch of greedy or perhaps foolish politicians feathering our own nests.

The issue of representation is important. I once had figures quoted to me—I cannot recall the source and offer my apologies for that—indicating that Tasmania has the most represented system of government with something like one politician for every 2,800 Tasmanians.

Mr Moore: No, it is much less than that, 650 at the most.

Mr Hargreaves: It is 1,250.

MR SMYTH: Mr Moore corrects me, saying that it is 650, and Mr Hargreaves says that it is 1,250. It is very low. I understand that the ACT has one politician for about 13,000 members of the population. Clearly, when you get that range of disparity, it is time to take into account how best to serve the people of the ACT. We have actually had a report that suggested that there be more members. It is a shame that it has taken almost two years to get to a position where, clearly, the majority of the members are in favour of proceeding with that. So, Mr Speaker, the government will be supporting the amendments that will bring about the situation I read out at the start of my speech.

Mr Kaine raises an interesting option. This government has never been afraid to step outside the envelope in terms of how it governs. Indeed, my colleague the leader of the house, Mr Moore, was invited into it as, I would assume, the only Independent cabinet minister ever in a government in Australia. It was this government, under Kate Carnell, that did that. That trial has proved to be very successful and the way that we have been able to work together is an indication that you can step outside the envelope.

I am reminded of a story that was relayed to me that the Founding Fathers and the authors of the American Constitution when the battle for President was over actually thought that the losing candidate for President should therefore become the Vice-President. I can just see Mr Bush and Mr Gore sorting that one out! But it does not mean that you cannot step outside the envelope and look at different systems.

I am not sure how under Mr Kaine's proposal you would reconcile the varying approaches of the different parties and the policies that the different parties and Independents would have; but if Mr Kaine can come up with a way of reengineering the system, perhaps we should consider it as well. He smirks. Mr Moore has gone over to give him another hug. I am getting worried, Mr Speaker: they are now hugging, embracing and shaking hands. The spirit of bipartisanship breaking out all over the Assembly will be a joy to all Canberrans when they read about it in the *Canberra Times* in the morning.

Mr Speaker, these amendments have to get up, but it is consistent with what the government has said all along that we have to get out together and convince the public that they do get value for money from their Assembly members, that it is about better representation and that it is about making the system work better. I think Mr Hird is the perfect example of an overworked Assembly member with the committee work that he gets through. The sheer number of reports that the committee he chairs, the Planning and Urban Services Committee, gets through, and it would have to be the hardest working committee in the place, is a credit not only to him but also his two co-members.

The fact that Mr Hird sits on just about every other committee that this place puts forward is an indication that there is something wrong, that there are insufficient members of the Assembly to do the job properly, and it is an important job. Given the road to Damascus that the Labor Party has travelled, given Mr Stanhope's guarantee, which is now in *Hansard*, of bipartisan support and given that, at the initial stage, the amended motion will now look at options to change the act and talk to the public, get out there and consult with the public about what shape and what size their Assembly should be, the government will be supporting the amended motion, Mr Speaker, with a view to making sure that what we do get is bipartisan support and what we do get is more handshaking and hugging from Mr Moore and Mr Kaine and that we actually end up with better governance and better representation.

I believe that the model we have whereby we have amalgamated two levels of government into one has been successful. It was not without its detractors early on, but I think the fact that in a couple of areas the ACT has been able to merge local and state or territory government functions into one level and do it successfully is an indication to the rest of Australia of the sort of government system it should be looking at.

It also provides a model possibly for a future republic whereby Australia could end up with two tiers of government and regional government based on the work that the government has done with the shires and the major towns in the region of the Australian capital. There is a lot of food for thought on the table tonight. I welcome Mr Stanhope's statement that there must be a bipartisan approach. I am pleased that they have travelled their road to Damascus. The government will be supporting the amended motion.

Mr Stanhope: That was crap, minister, crap.

MR SPEAKER: Order! Withdraw that, please. That is an unparliamentary comment.

Mr Stanhope: I withdraw anything that was unparliamentary. I was provoked.

MR SPEAKER: Thank you.

MR MOORE (Minister for Health, Housing and Community Care) (8.28): Mr Speaker, I rise not to withdraw any language but to say that, having listened to the debate and having looked at the amendment and the foreshadowed amendment, I have shifted my position and will accept Ms Tucker's motion as amended by Mr Stanhope's amendment, if that is what goes through. I think that we would come up with a fairly sensible motion with the version that was read out by Mr Smyth and I am quite comfortable about going with other members in that approach.

MR HARGREAVES (8.29): Mr Speaker, I sat here dumbfounded as the government tried to take the credit for the adoption of a bipartisan approach and accused us of discovering the street called Damascus Road. Mr Speaker, I thought that Mr Smyth's speech was full of gratuitous comments which were totally uncalled for in this rather serious debate. A little bit of a jibe across the chamber is always good for entertainment, but I do not think that his comments were quite necessary.

It was a bit rich of Mr Smyth to cite as an achievement having an Independent in the government, describing it as a major innovation in government processing, as it was nothing more than a matter of the survival of the government of the day which happened to have some measure of success. Mr Speaker, I urge people to support the position of Mr Stanhope and Ms Tucker on this issue, which is a very serious matter. I urge the government to go into this consultation process with an honest approach, which is something that, I suspect, occasionally it does not do. I do not think it always goes into consultation processes honestly. Often it only pays lip service to the consultation process, having predetermined ideas. I hope that the consultation process will work this time and that the Chief Minister has learned a lesson from Mr Stanhope about open consultation.

MR WOOD (8.30): Mr Speaker, it is clear that the Liberals want the Assembly to have 21 members. Perhaps they want it to have more than 21 members, but they certainly want it to have 21 members. I was disturbed to see Mr Smyth stand up and try to draw the Labor Party into the same arena on bipartisanship by saying, "Good, you are going to talk about it and we are going to think seriously about it." I am sure that he wants to go out there and say, "The Labor Party is on side as we look at these issues."

Mr Moore: No, he said a joint press release; in that way you both agree to it.

MR WOOD: No, it was much more than that, Mr Moore. It is a very smart move, with smart words and smart running around the issue, by Mr Smyth to try to say that the Labor Party wants 21 members. The Labor Party has great reservations about that. At this time, we do not want 21 members. As we stand now, we do not want 21 members, but we are prepared to have some community consultation to hear what the community says. We are going to take a lot of convincing, I would believe. We certainly do not want the fairly specific guidelines that Ms Tucker laid down. We would want a rather more open-ended discussion, if we are going to have one at all. But we have great reservations about increasing the membership to 21.

Let me go back to the nexus between 17 members and the population we had in 1989, as though that was so well-founded that we could rely on it for future growth, if growth is what some people here want. Those of us who were here at the time know as well as

I do, if they can remember, that the figure of 17 was a mad stab, a mad guess, with no foundation at all. It was just a matter of deciding how many we could have. We could not have too many and we could not have too few. We had to ask ourselves what sounded like a reasonable number. No thought was given to whether the population of Canberra at the time could sustain 17 members and that was an adequate measure of representation. There was none of that. It was a mad guess. Now someone wants to lock that mad guess into the basis for what we should have in the future. That just will not wash. Mr Kaine would know that. We could go back to 15, Mr Kaine. I am not saying that that is the way to go, either.

Mr Kaine: It's a good round number.

MR WOOD: I am not sure that it is a round one, but let us not make any false assumptions here about what might happen. I do not want the government now going out there and saying that the Labor Party wants the Assembly to have 21 members because that is simply not the case. We will accept the debate in general terms, but no more than that. So let us not see any weaselling around the situation from people on the other side of the house.

Amendment agreed to.

MS TUCKER (8.34): I ask for leave to move an amendment to the motion and to speak to it without closing the debate.

Leave granted.

MS TUCKER: I move:

> Omit all words after "requests the Chief Minister to", substitute:
>
> "(1) undertake discussions with the Commonwealth Minister for Territories on the possibility of amendments to the *Australian Capital Territory (Self-Government) Act 1988* to devolve to the Assembly the power to determine the number of Members;
>
> (2) undertake public consultation on—
>
> (i) the desirability or otherwise of expanding the size of the Assembly; and
>
> (ii) the specific proposal to increase the Assembly to 21 Members, with 7 Members representing each of 3 electorates; and
>
> (iii) other possible combinations of Member numbers and the distribution of Members across electorates;
>
> with the aim of commencing any change to the Assembly from the election scheduled for 2004;
>
> (3) report to the Assembly on the implementation of this motion by the end of June 2001.".

A fair bit has happened since I moved my motion. There has been a lot of discussion in the media and in the Assembly. I am really pleased to see what has happened tonight. Things went a bit sideways just then with Mr Wood. I hope that Mr Smyth does not intend to make a political issue out of it again. What we are seeing tonight is a commitment from both of the major parties not to make political points out of this issue.

My original motion has been changed quite significantly by Mr Stanhope's amendment. The amendment I have just moved takes out the specificity that was in the original motion. I know that Mr Moore supported the original motion, as we did, obviously; but, as with Mr Moore, we are recognising the reality here and just want to see this debate progress in some way. I am happy to support Mr Stanhope because I believe that it is worthwhile achieving agreement on at least progressing this discussion to some degree in a bipartisan way. It was better to do that than just to drop my motion or have it voted down.

There has already been a lot of community debate on the need to increase the size of the Assembly. There was the Pettit report on governnance and the inquiry of the Assembly select committee. Mr Wood felt that the 10,000:one ratio was just plucked out of the air. I accept that it was, if that is what Mr Wood tells us, but I know that it was looked at by Pettit and that Pettit supported it as a reasonable ratio; so there have been further discussions.

Mr Wood: There is no foundation anywhere for it.

MS TUCKER: Mr Wood interjects that there is still no foundation for it. I am just trying to make the point that there has been further examination of it by Pettit and it was not found to be without substance. Looking at the proportion of voters to members across Australia, it is certainly obvious that that figure was not an overestimation. Clearly, we are underrepresented compared with the average across Australia, particularly the Northern Territory and Tasmania.

I have, as I said, accepted the fact that members want further consultation on this issue, which is at least something that we will be achieving tonight. We will have agreement that there will be consultation on this issue. I do not quite understand Mr Smyth's point that I should be undertaking the consultation. If I had the resources that Mr Smyth has, I would be delighted to carry out the consultation, but I am not a member of the government.

Normally it is accepted that it is the role of the government to undertake such broad community consultation. The Greens consult as much as possible within their resources, but it seems a rather bizarre argument to say that somehow I should take it on if I want it. This government has a consultation protocol which they say they are behind and committed to.

I know that Mr Humphries has suggested that there could be a deliberative poll on the issue, which is an interesting idea. I would be prepared to look at that further. There is a need for background information or an issues paper to be prepared for the public to explain the pros and cons of this issue. I have noticed that there is very little knowledge in the community of what MLAs and the Assembly actually do on a day-to-day basis. All they hear about in the media is that the Assembly or the government made this or that decision, but they never hear about all the lead-up work done by members in the making of those decisions.

Mr Hird pointed out that if people do feel the need or get upset enough to contact a local politician they get very annoyed if they cannot get access to that person. I try to see anybody who wants to see me, but it is extremely difficult to do so. I agree with Mr Hird that people can become upset when they find that they cannot access a politician when they feel the need to do so.

The argument has been put that the feeling in the community is that most politicians are not held in high regard and the creation of a larger Assembly would result in them getting more politicians than they want. This seems a rather odd argument as it implies that the way to deal with the negative behaviour of politicians is to restrict the number of them. I think that members here are deluding themselves if they think that avoiding the issue of the number of politicians would make them look more responsible, or at least not increase the negative perceptions that some people have. The negative perceptions of politicians come from their own behaviour, not the total number of them. If politicians want to improve their status in the community, it is up to them to act more ethically.

It is also the case that if members do not address this issue and the Assembly becomes less and less effective in meeting the community's needs as Canberra's population grows, the negative perceptions about politicians could increase anyway. I would much prefer to make this Assembly more effective by increasing the number of members and risking any short-term political backlash than letting the work of this Assembly gradually decline in quality as we become even more overloaded with demands.

I would also like to remind members that my motion says that any increase should not occur until the 2004 election. I am obviously trying to take some of the political heat out of the debate, but I think that it is still not something on which we should go too slow, because we will find if we do that that we will be getting closer to the 2004 election and it will be harder for members to support it because of the perceived political backlash; so it would be a good thing to get going right now. I am glad that there appears to be agreement here tonight on progressing the debate.

MR STANHOPE (Leader of the Opposition) (8.41): Mr Speaker, I move the following amendment to Ms Tucker's amendment:

> Omit from paragraph (2) all words after "size of the Assembly".

Mr Speaker, I think the issue has been well canvassed, but I will just reiterate a couple of points. The Labor Party's position in this regard is that we are happy for this process of consultation to proceed. Perhaps it is relevant for me, in the context of the amendment I have moved, to give a brief outline of those aspects of Ms Tucker's motion that the Labor Party will not agree to and that I have, through the amendment I have proposed, suggested be changed.

As part of a preamble to the motion, Ms Tucker had a proviso that the Assembly agree that a ratio of one member per 10,000 electors, as recommended in the Pettit review of governance, be an appropriate ratio. As Mr Wood has indicated, the Labor Party does not accept that that is appropriate. Perhaps that is a matter that will be the subject of the consultation, but we do not necessarily accept that that is the case.

Ms Tucker also proposed that we agree that the Assembly should continue to have an odd number of members. The Labor Party does not necessarily agree that we should, or must, have an odd number of members. We do not necessarily agree that that is the case. I have heard it discussed that it would be possible to have four electorates of five members. I have heard suggestions of three electorates and five members and a Canberra-wider electorate of six. I have heard a range of suggestions in relation to possible configurations. The Labor Party does not accept that any of them are appropriate or reasonable; so we do not accept that that would be appropriate.

As Ms Tucker indicated in her speech on the amendment to which I have moved my amendment, she thought it appropriate that the public consultation that we are seeking include consultation on the specific proposal to increase the membership of the Assembly to 21 with seven members representing each of three electorates.

Once again, the Labor Party is not saying that it would support an increase to 21 members. We are quite unequivocally not suggesting that we support a change of membership at all. We are not suggesting that. We are suggesting that we would be prepared to join with the government in a bipartisan consultation process. We are not suggesting for one minute that we would agree to an increase in the size of the Assembly.

We are certainly not suggesting that we would agree to a proposal that there be three 7-member electorates. Members would be aware that Mr Hird presented a submission to the Pettit review and gave evidence supporting seven 3-member electorates. It is Mr Hird's heartfelt view that we should have an increase to 21 members, but they should be comprised in seven 3-member electorates. That is Mr Hird's view; at least it was at the time of the Pettit review.

Ms Tucker has suggested today that she would propose three electorates of seven members. Mr Kaine has suggested another configuration which might involve a decrease in the size of the membership of the Assembly. The Labor Party is suggesting that these are all the sorts of things that we feel might appropriately be the subject of a public consultation process. What we are doing is saying that we acknowledge the political reality.

This sort of decision is very difficult; we acknowledge that, and we acknowledge that it is a big ask to request the Liberal Party, through the government, basically to go out on its own, so to speak, with an opposition sniping and carping at its heels, and expect it to enter into genuine consultation on a difficult political issue. We are saying that we acknowledge and recognise that and will support this consultation process. We will not seek to score cheap political points.

But let not our position be misinterpreted. We are not saying for one minute, and I do not believe the Liberal Party is either, that we support an increase in the membership. That is not what we are saying and that is not, basically, the basis of the consultation that we are supporting. We will support consultation about the size of the parliament.

Mr Smyth did read out his understanding of what the amended motion might look like. There was a part three of Ms Tucker's amendment, which reads, "Report to the Assembly on the implementation of this motion by the end of June 2001." I do not have

any particular views about that, but that would be a part of the motion if it were passed as amended by me.

Amendment (**Mr Stanhope's** to **Ms Tucker's**) agreed to.

Amendment (**Ms Tucker's**), as amended, agreed to.

Motion, as amended, agreed to.

CASINO CONTROL AMENDMENT BILL (NO 2) 1999

Debate resumed from 8 December 1999, on motion by **Mr Kaine**:

> That this bill be agreed to in principle.

MR SMYTH (Minister for Urban Services) (8.47): Ms Carnell wanted to speak to this. She has a pair for this evening, so I move:

> That the debate be adjourned.

Mr Berry: What? She hasn't got a pair. Gary has.

Mr Moore: No, she does. I have double-checked with Simon.

MR SPEAKER: Order, please! This is not a matter for the chair. The question is that the debate be adjourned.

Question put.

The Assembly voted—

Ayes, 5	Noes, 6
Mr Cornwell	Mr Berry
Mr Hird	Mr Corbell
Mr Kaine	Mr Osborne
Mr Moore	Mr Quinlan
Mr Smyth	Mr Rugendyke
	Ms Tucker

Question so resolved in the negative.

MR SMYTH (Minister for Urban Services) (8.52): Mr Speaker, the government will support this bill. We support it because it accords with the government's policy on competition and with the government's agreement to the national competition principles. The government also supports the bill because we believe it is a good deal for the territory. It is a good deal for the territory because the government has negotiated to receive a premium of $10 million. This amount equals to $50,000 per machine. It is the

same amount that was achieved by the New South Wales government when it released a limited number of machines to hotels last year.

In addition to a tax rate of 30 per cent, which is adjusted for the GST, of gross gaming machine profits, the casino also will be required to donate $100,000 per annum to charities. This amount is subject to CPI movements. The tax on the casino's gaming machines operation is expected to return to the territory an average of $2.4 million per annum.

Mr Speaker, over the 10 years of the proposal, the deal achieved for the territory about $34 million plus at least $1 million to charities. I think the territory's taxpayers would be well pleased with this outcome. The licensed clubs also should be pleased with it. For the territory to receive the same level of additional income from the clubs, it would require an increase in tax receipts of at least 10 per cent.

When the club industry considers its positions in relation to maintaining its monopoly on modern gaming machines, it needs to compare the costs of the monopoly and the costs of limited competition. The Allen Consulting Group's 1998 report on its national competition policy review of gaming legislation in the territory records that the cost to the clubs of 100 gaming machines in the casino would be negligible. It is reasonable to assume that the costs to the clubs of 200 machines in the casino would be not much more than negligible, which is significantly less than the $3.5 million per annum. Mr Speaker, it is also an oversimplification to conclude that because the tax rate is 30 per cent inclusive of GST the remaining 70 per cent of the profits will flow out of the territory.

The casino is a significant employer, particularly of young people, and will require more staff to manage the gaming machines. The casino pays payroll tax as well as other government and government instrumentality charges. It also provides employment in the form of contracts for services to the casino, such as the supply of food and beverages, as well as the management and operation of its restaurant. The casino is an integral element in the territory's hospitality and tourism industry, recording about 600,000 visitations each year.

Mr Speaker, the government will also be commissioning amendments to increase the role of the Gambling and Racing Commission in the approval and operation of the machines. Unfortunately, the amendments are not ready. At a later stage in the debate we would like to adjourn the debate so that we have time to put forward our amendments when we get to the detail stage.

MS TUCKER (8.57): No, the Greens will not be supporting this bill. I find it quite extraordinary that it was even put by Mr Kaine because he was chair of the committee that looked at the social and economic impacts of gambling in the ACT. As a result of that work there was a gambling commission set up, as all members are aware. We also have a cap on the number of poker machines. On the matter of hotels and the casino, the committee made it quite clear that we need to have an understanding of the social impact of increasing access to poker machines before we, as a responsible parliament, made a decision on such matters. What was very clear from this committee was that we have never had that information as a community. Decisions have been made in a very ad hoc way. Basically, it has just been market driven. Until the cap was imposed here, that was

definitely the case. In other places around Australia, we now see equally concerning figures.

I found it quite fascinating that when we were talking about Internet gambling and licences being given out for that, Mr Humphries said at the time, "This is not a problem. We know the problem is with poker machines. We know that's where the problem is." I disputed and argued that at the time because clearly there are a number of reports which would suggest that Internet gambling could be just as problematic. The argument from the government at that point was that poker machines were where the problem was. But what do we see here?

I cannot believe that the government would be supporting this legislation from Mr Kaine because we heard the government stress at a public forum on problem gambling that poker machines are where the problem is. Okay. So we have a gambling commission and we have asked it to do research. I have asked for a briefing to see where that research is up to. I haven't seen any reports on this from the gambling commission to tell me, as an elected representative, what I should do, or what is responsible. I have not been given any data to look at on which I can form my decisions. No-one in this Assembly has that. It has not been produced yet. So why are we having this debate? I have no idea why. I think it's absolutely inappropriate and I will not be supporting this motion.

Mr Osborne: I move that the debate be adjourned.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): Mr Osborne, I am advised by the Clerk that that motion may be moved after the bill has been agreed to in principle because the question of adjourning the debate has been dealt with.

Mr Osborne: Well, I seek leave then, Mr Temporary Deputy Speaker.

Mr Berry: No, no, no. We're going to make it hard for you, Ossie.

Mr Osborne: Yes, you already are.

MR TEMPORARY DEPUTY SPEAKER: Order! Mr Osborne, what do you wish to do?

Mr Osborne: I wish to adjourn the debate on the bill.

MR TEMPORARY DEPUTY SPEAKER: You are seeking leave to adjourn the debate?

Mr Osborne: I seek leave.

Mr Berry: He can't adjourn it. There has been a move to adjourn it.

MR TEMPORARY DEPUTY SPEAKER: You can seek leave, Mr Osborne. With the indulgence of the chair and the house, you can seek leave to move a motion to adjourn the debate.

Mr Osborne: Which I just did.

Mr Berry: No. You will have to argue for a suspension, Ossie.

Mr Osborne: I seek leave.

Mr Berry: Argue for a suspension.

MR TEMPORARY DEPUTY SPEAKER: Mr Berry!

Mr Berry: Yes, you can. I can see you arguing for it. Go on, argue for it.

MR TEMPORARY DEPUTY SPEAKER: Mr Berry, do you wish to join the chair?

Mr Berry: No, I want to have an argument with Mr Osborne.

MR TEMPORARY DEPUTY SPEAKER: Well, do not interject, sir.

Mr Osborne: Mr Berry and I are in agreement on how this bill should be dealt with, Mr Temporary Deputy Speaker.

MR TEMPORARY DEPUTY SPEAKER: You are seeking leave of the house to move a motion. Is that what you are doing, Mr Osborne?

Mr Osborne: Yes.

Leave not granted.

Suspension of Standing and Temporary Orders

MR OSBORNE (9.02): I move:

> That so much of the standing and temporary orders be suspended as would prevent Mr Osborne moving a motion to adjourn debate.

Mr Temporary Deputy Speaker, I think I gave Mr Kaine an undertaking yesterday morning to adjourn this issue. I must admit that I did get somewhat confused because I had been dealing with a certain faction in the Labor Party, not with a different faction, about what was happening with this piece of legislation. I assumed that Ms Tucker was going to adjourn it and that the Labor Party was going to support the adjournment, but apparently they are not.

Ms Tucker: I never said I would adjourn it.

MR OSBORNE: No. Ms Carnell was going to adjourn this debate. Anyway, I am happy to adjourn it, but I have got an undertaking from all members that we will resolve this issue next week.

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

MR OSBORNE (9.04): That was very painful, Mr Temporary Deputy Speaker, and this is painful, but I move:

> That the debate be adjourned.

The Assembly voted—

Ayes, 7	Noes, 4
Mr Cornwell	Mr Berry
Mr Hird	Mr Corbell
Mr Kaine	Mr Hargreaves
Mr Moore	Ms Tucker
Mr Osborne	
Mr Rugendyke	
Mr Smyth	

Question so resolved in the affirmative.

Debate adjourned to the next sitting.

SUBORDINATE LAWS AMENDMENT BILL 2000

Debate resumed from 6 September 2000, on motion by **Mr Hargreaves**:

> That this bill be agreed to in principle.

MR SMYTH (Minister for Urban Services) (9.09): Mr Temporary Deputy Speaker, the government will support in principle the proposal to provide information to assist the Canberra community and members of the Assembly to understand territory laws. The regulatory impact statements can assist in understanding government rule-making. The proposal to make these statements available for public examination can assist the process further by providing information to the public, by outlining options, and by assisting the members of the Assembly to examine subordinate laws. Regulatory impact statements are routinely prepared for major legislative and policy proposals.

The bill is targeted to those subordinate laws that impose appreciable costs. It is appropriate that these receive proper and informed scrutiny. The administrative burden arising as a result of the bill is expected to be minor and will be assessed after its implementation. I believe the leader of the house has spoken with Mr Hargreaves about this. The government supports the bill. We have not had time to consider it fully, so we will support it through to the in-principle stage this evening and then seek an adjournment.

MR MOORE (Minister for Health, Housing and Community Care) (9.10): I am pleased on behalf of the government to back my colleague Mr Smyth in supporting this legislation. I think Mr Hargreaves is adding to a series of amendments to legislation such as subordinate legislation which have made the government more open and more accountable. It started, I think, with the Subordinate Laws Act which, as I recall, was Mr Connolly's act. I moved amendments to that. His act related to disallowable instruments. I added to that to make sure that those disallowable instruments were able to be amended as well.

The Administration (Interstate Agreements) Act and a range of acts will make this parliament much more informed than other parliaments, and we have the ability to make sure that our laws are not undermined by the executive. We can watch very carefully how decisions are made.

Mr Hargreaves' legislation is another step in that direction, and I think that is very sensible. This government, Mr Temporary Deputy Speaker, has always been the most open government in Australia, so we are not only comfortable but also excited about the suggestions that Mr Hargreaves has made.

There are some issues in respect to the detail stage which we are looking at at the moment. We have agreed with Mr Hargreaves to support this bill in principle. We will look at the details. We will go to Mr Hargreaves if we have any issues about amendments early so that we have time to discuss those and make sure that we can adopt a sensible approach before coming back into the Assembly with them.

MS TUCKER (9.12): This bill requires the government to present regulatory impact statements when introducing subordinate legislation in cases where the subordinate legislation may impose significant costs on part or all of the community. I appreciate the effort of Mr Hargreaves to circulate a draft of this bill some time ago so that we would be aware of this proposal.

I understand from him that regulatory impact statements are already provided in a number of states to allow proper scrutiny of the effects of subordinate legislation. I understand that this bill is modelled on the Queensland legislation.

As members are aware, while bills are scrutinised in some detail by the Assembly because there needs to be a vote on them to get them implemented, subordinate legislation can often slip through unnoticed because they are only disallowable. Often the subordinate legislation is just provided to the Assembly as a list of documents, and members have to take the trouble to find these documents and read them before the disallowance period expires. Once you get a copy of the regulation or instrument and explanatory statement that usually comes with it there is still the issue of interpreting the impact of these instruments. This can be a quite rushed process, so it would be good to have these regulatory impact statements to make our job easier in scrutinising subordinate legislation.

I would not think this legislation would impose much additional burden on the government. I assume that the government would already be assessing the impacts of its regulations as part of their development, so it should only be a matter of tidying this

work up for presentation to the Assembly. I also note that regulatory impact statements will not be required for all pieces of subordinate legislation.

This bill is just part of an overall process of making government accountable for its decisions, and I think it is worthy of support. It is not just about making it accountable, I would add. In light, particularly, of the Auditor-General's report on Bruce Stadium, I think it might mean that certain processes that we would assume were occurring but have not been occurring might start to be introduced.

One issue of detail I would raise about the bill, however, is that the assessment of costs and benefits of implementing subordinate legislation and the regulatory impact statement is focused on quantifiable costs and benefits. I note that there is a condition on this that the quantification would occur only if practicable and appropriate. I also note that the definition of costs and benefits includes direct and indirect economic, environmental and social costs and benefits. I would like to put on the record that I think the government should provide comprehensive assessments that include non-quantifiable costs and benefits, such as impacts on the environment or on community well-being, rather than just focus on dollars and cents.

At this stage I am prepared to see how the legislation works in practice, but I will be watching very carefully the content of the regulatory impact statements to check whether they are too narrowly focused.

MR HARGREAVES (9.15), in reply: I am closing the debate and I await the consultation process. I would like to put on the record my appreciation of the government and the Greens for their support in principle for what this bill tries to do. As Mr Moore said, it is the latest in a suite of pieces of legislation intended to make more transparent the processes of government and the development of legislation so that we as members in this tiny Assembly can get information before we are asked to make a decision on it.

When I issued the consultation draft I did offer to show members examples of what had been put forward as regulatory impact statements in the states. As I said in my tabling speech, they vary from 400 or 500-page documents on very significant issues like the proposed Children's Services Regulation 97 in Victoria down to a couple of pages on certain issues in other jurisdictions. So it doesn't necessarily mean it is going to be a lot of work.

In fact, as the minister said, quite often these impact statements already have been prepared for government anyway. It just makes a lot of sense that they be made available to members so that we can get an idea of what impacts there will be on significant parts of the community. Often also, when we don't do it and we then stumble across these regulations and try to disallow them, a big blue ensues. It hits the press and the public arena, and the bureaucrats who would have to do it in the first place end up with three times the amount of work. If they do the work in the first place they probably will save themselves quite a lot. It would certainly save us a lot of angst.

Mr Temporary Deputy Speaker, I am quite happy to entertain some minor amendments to this legislation, although I do not think they are necessary, if people have difficulties with the odd little bit here and there. As I have said before, this is modelled on the

Queensland one. Curiously, when I attended the meeting of chairs and deputy chairs of scrutiny committees it was put to me by a Queensland delegate that more often than not it is the exemption clauses which are invoked rather than the ones when it has to be done. It is not intended to put an impact statement behind every single piece of subordinate legislation. Nobody wants to know about the impact if you are going to put up a government charge by 2 per cent. For example, if a government charge were to go up with the CPI you would not bother to do an RIS for it. On the other hand, if you put up a charge to, say, 100 per cent over and above the CPI, you might like to see that.

I believe that variations of the Territory Plan are regulations. If a variation to the Territory Plan had to be put forward in order, say, to put a road around a significant ridge, then perhaps one of these regulatory impact statements showing the economic and environmental impact of that proposal, with its alternatives, would be quite useful to people long before it actually got to this stage. I suspect there are quite a few others like that.

I would like to reiterate my appreciation of the government for this. I am sure that in the spirit of a bipartisan approach to transparency and accountability, for which this government is well renowned, that we will be able to achieve something.

I want to pay particular credit to Mr Connolly for his introduction of the subordinate laws legislation in the first place, and also to Mr Moore. This legislation is another piece in a suite of transparency initiatives. I have to say, Mr Temporary Deputy Speaker, that state colleagues at these meetings of chairs and deputy chairs have been supportive of regulatory impact statements. You will remember that when we went to the conference in Sydney it was quite a significant initiative. The OECD representatives actually encouraged jurisdictions within a country to go down this track. Whilst there are a number of jurisdictions doing it, there are a number dragging the chain a bit, and I would like to be on the winning side.

I also feel, Mr Temporary Deputy Speaker, that when this particular piece of legislation is added to the Administration (Interstate Agreements) Act as part of that suite, you will find that the ACT is a leading jurisdiction around the country for this sort of approach. So I congratulate Mr Connolly and Mr Moore for their foresight, and I appreciate very much the support from the Greens, the government and, I hope, from the crossbenches as well.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Clause 1.

Debate (on motion by **Mr Moore**) adjourned to the next sitting.

YARRALUMLA BRICKWORKS AND SURROUNDING LAND DEVELOPMENT—PUBLIC CONSULTATION

Debate resumed.

MS TUCKER (9.22): Does someone else want to speak?

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): You are not closing the debate. I understand, Ms Tucker, that you are speaking to Mr Moore's amendment. Is that right?

MS TUCKER: Apparently so, yes.

MR TEMPORARY DEPUTY SPEAKER: Well, I am guided by you.

MS TUCKER: Well, I am happy to close the debate. I thought I was closing the debate. I didn't think anyone else wanted to speak. I will speak to the amendment and not close the debate.

I do not want to support this amendment. I do not think a satisfactory process has occurred. That amendment appeared basically because a meeting was held, as I understand it, with very little notice. The representative from the Yarralumla Residents Association has not had time to consult with the community that he represents. I have spoken to him and he felt it was a pressure situation. He made a particular decision, but he said he had not seen exactly what the result of that conversation was. Maybe he has now. I did explain the amendment to him. Basically, he took a decision that he had to take at the time. I am not sure what the decision was. I do not want to say what it was because I am not clear and I do not want to misrepresent the situation.

What I am saying is that I do not feel comfortable with the process that caused that amendment to be presented. I personally do not think the amendment is a good one. It is not a good suggestion. I explained in my tabling speech that the process has resulted in a loss of faith and trust in the current process by that community. If we allow that process to continue it is not going to be what the community wants.

I have been to too many community meetings now and have spoken to too many individuals now to accept that a round table with the minister and some bureaucrats and the consultant is going to solve these problems. It clearly cannot solve these problems. There can be a meeting. There can be a round table. We had one yesterday on a disabilities inquiry. It led nowhere. Having a round table is not a way of resolving these complex questions. Apparently Mr Smyth has volunteered to offer a fourth option but was not able to say what that option is, so that clearly is unsatisfactory.

What we have heard from the community is that they need to have an opportunity to be heard on what happens at the brickworks site and to the brickworks. The community wants to see the brickworks conserved. The community is interested in a discussion about the brickworks site. They do not want to be hijacked into this agenda of the government's which not only looks at the brickworks but also might look at Floriade, possibly a move of CIT—who knows who thought of that idea—and possibly quite dense urban consolidation or housing development. They do not want that to be part of the agenda, and that was not initially what they thought the discussion would be about.

Mr Smyth, when he was talking before, said he felt that people at the community meeting who were interested in some residential development were not allowed to be heard. That is not correct. There was obviously a disagreement between a couple of people and a fight over the microphone, but Mr Smyth was not at that meeting. A number of people at that meeting were heard to say, "We are not totally opposed to the concept of some residential development around the brickworks."

Mr Moore: Kerrie, were you at that meeting?

MS TUCKER: Yes. Mr Moore interjects and asks me was I at the meeting. I explained in my previous speech that I was, but maybe Mr Moore was not here. That is why I can speak with authority.

Mr Moore: Of course I was.

MS TUCKER: Well, I said it. I did not know why you were asking me when I already said it. So Mr Moore said he was here.

Mr Moore: I was clarifying which meeting was which, that's all.

MR TEMPORARY DEPUTY SPEAKER: The minister will come to order. You will address your remarks to the chair, Ms Tucker.

MS TUCKER: Having clarified that I was at the meeting and that I am speaking from that experience, I know that a number of people spoke and were heard to say that the possibility of residential development could be interesting. But what many people said, including some of those people who said some residential development might be acceptable, was: "We don't want to be presented with three proposals like this which have such a lot of residential development which we haven't had a say in." What a lot of people at that meeting were asking for, what the majority by far were asking for, and what the majority of people I have spoken to, both before that and since, are asking for, is that they be respected and offered the opportunity to look at the brickworks site and then come up with different proposals which may, indeed, include some residential development.

A reasonable approach has been taken by many of the people who have been talking about these issues. Certainly, there were some extremists on both sides, but on the whole a very reasonable approach has been taken. For that reason I believe there is goodwill in the Yarralumla community if they are given a chance to be heard and if they feel they are respected.

Mr Osborne has asked to look at my speech so that he is across some of the things that have happened that have caused the community to lose faith in the process. I will summarise them unless he has had an opportunity to read it. Basically, as we know, the community went with good faith into a process of consultation, they thought, and then the next day read in the *Canberra Times* that the Chief Minister had announced that Floriade would go there and, basically, that if the community goes ballistic, which they probably will, then never mind. Now, how is that for respecting the community, Mr Osborne?

Then, Mr Osborne, the consultant said that any development of the brickworks had to be funded by residential development. Then, at the next meeting, the government said, "No, no, that's not true; it doesn't have to be funded by residential development," and the meeting went into uproar, Mr Osborne, because the meeting had been told the week before that any—

MR TEMPORARY DEPUTY SPEAKER: Ms Tucker, direct your remarks to the chair.

MS TUCKER: I am addressing him through you, Mr Temporary Deputy Speaker. Then the community went into uproar because they knew that they had been told the week before that any refurbishment of the brickworks had to be funded by development, and so it goes on. I can see that people want me to wind up so I will not go on. I said it all in my original speech. For that reason I will not support this amendment moved by Mr Moore because I do not think it will address the very serious issues that have come to light through this very flawed process.

MR RUGENDYKE: I seek leave to speak again.

Leave granted.

MR RUGENDYKE: I said that I would consider the Moore amendment during the adjournment. As I said before, I did not go to the fight. I only know from the news what came out of that fight. Incidentally, did you hear about the Mike Tyson fight at Madison Square Garden? A meeting broke out. Sorry. It was a poor attempt. Okay. I will support the amendment as a fair compromise, given that any proposed residential development on this site will come to the urban services committee and the debate can continue there.

MR CORBELL: I seek leave to speak again.

Leave granted.

MR CORBELL: I thank members. I indicate for the record that the opposition will not be supporting Mr Moore's amendment. The reason for that is that it does not address the underlying issue. The underlying issue is that the community have no faith in this process. The consultation process lacks legitimacy and a round table meeting will do nothing to restore that. Indeed, it places no obligation on the government to act in good faith. It is quite clear to date that they have not, and a round table meeting will not resolve that situation. Actually, it is quite contrary to the intent of Ms Tucker's motion. I am somewhat surprised that it has not been ruled out of order because it does have the effect of negating the motion. Nevertheless, the Labor opposition will not be supporting it.

MR MOORE (Minister for Health, Housing and Community Care): I seek leave to speak again.

Leave granted.

MR MOORE: Thank you, Mr Temporary Deputy Speaker, and thank you, members. The reason I want to speak for a short while is that I want to make it clear on the record that I do not feel that the consultation process has been a good one. The reason for the amendment is that there has been a consultation process. Quite a significant amount of money has been spent. I think we have the opportunity to convert the consultation process into a reasonable one. Even a round table meeting of the type I am suggesting does not necessarily mean the end of the process at all, and I am not suggesting that it is the end of the process. I wanted that to be clearly on the record.

I have spoken to Mr Smyth. I think it is important to remember that there is also another public meeting prior to this where the consultants will put some options. They already have put some options. I understand they will be putting more options than that, and I hope so. I wanted to make it clear that that was the case.

Ms Tucker was quite right. The people we spoke to this morning in the senior positions within the residents associations, and that is who we tend to speak to because they are the elected representatives, certainly were under pressure today, and I do not miss that. I appreciate the support from those members who have indicated they support my amendment. I still think it is the best way to go—to continue the consultation process and try to make the best of what we have got and see if we can then get the outcome. I think the government is getting the message.

MS TUCKER: May I seek leave to speak very quickly again on that?

MR TEMPORARY DEPUTY SPEAKER: Why don't you speak on the adjournment when the time comes?

Mr Moore: No, she can speak now. Close the debate.

MR TEMPORARY DEPUTY SPEAKER: Order, Mr Moore! Are you seeking leave, Ms Tucker?

MS TUCKER: Yes.

Leave granted.

MS TUCKER: Thank you. I just wanted to respond to something Mr Moore said then that was something I did not mention before. The community meeting is on 7 December. There was an immediate reaction to that from the meeting as well; that it was a very difficult time. It is two days before school break-up. They felt that that was not a good time. They actually wanted the process to go longer. If it was going to go, they wanted more options. They wanted a blank page, and they wanted to rework the whole thing. I think even that assumption that the meeting of the 7th is okay is not true. It is not actually borne out when you look at the reaction to that announcement at that public meeting.

The other thing I think I should say to be fair is that when I spoke to the representative of the Yarralumla Residents Association there was a suggestion that we could adjourn this until next week so that they could talk to their residents association. That was one suggestion. Other people that I spoke to from Yarralumla did not want that to happen

because that would be the night before the meeting. So it has been difficult to call this because no-one has had time to really consult broadly on it, but I have taken this decision for the reasons that I have outlined.

Amendment (**Mr Moore's**) agreed to.

Motion, as amended, agreed to.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Assembly adjourned at 9.37 pm