DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

15 February 2001

Thursday, 15 February 2001

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

Discharge of orders of the day—Assembly business and private members business

MR MOORE (Minister for Health, Housing and Community Services) (10.32): Mr Speaker, I ask for leave to move a motion to discharge Assembly business and private members business orders of the day.

Leave granted.

MR MOORE: I move:

> That the following orders of the day be discharged from the Notice Paper:
> Assembly business—
> No 10 relating to the Standing Committee on Health and Community Care's Report No 2 on men's health services;
> No 16 relating to the Standing Committee on Health and Community Care's Report No 3 on public hospital waiting lists;
> No 21 relating to the Standing Committee on Health and Community Care's Report No 4 on 1998-99 annual and financial reports;
> No 26 relating to the Standing Committee on Health and Community Care's Report No 5 on respite care services in the ACT;
> No 29 relating to the Standing Committee on Health and Community Care's Report No 6 on the draft 2000-2001 budget;
> No 44 relating to the proposed reference of standard of care for disability services to the Standing Committee on Health and Community Care.
> Private Members' business—
> No 12 relating to the Auditor-General Amendment Bill 1999.

We are seeking to rationalise the notice paper. We have dealt with responses to these orders of the day. There has been some debate and debate has been adjourned. It was recommended that these orders of the day be discharged following adequate debate in the Assembly.

MR QUINLAN (10.35): I will comment on private members business order of the day No 12. It relates to the Auditor-General Amendment Bill, which is my bill. I have already advised the clerical staff that I am happy for that to be removed from the notice paper, but I would like to record that the reason for removing it from the notice paper is that the bill relates to allowing the Auditor-General to report out of session. I have had quite comprehensive advice from the Clerk that problems relating to privilege might accrue to those reports and the people who use those reports subsequent to their publication out of session. I want to have that noted in *Hansard*, because the situation has arisen again in other legislation before this place.

Question resolved in the affirmative.

Building Amendment Bill 2001

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

Title read by Clerk.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.36): I move:

> That this bill be agreed to in principle.

This bill implements a recommendation of the coroner's report on the death of Katie Bender at the Royal Canberra Hospital implosion. The coroner said that "the distinction between leased an unleased land should be irrelevant in the building approvals process". Mr Tom Sherman, in responding on the implementation of the coroner's report, recommended that "early consideration be given to amending [the Building Act] to ensure that the building approval process applies to building work on all land, leased or unleased".

Currently, there is no capacity for ACT or Commonwealth government buildings on unleased land to be approved under the Building Act. Although these may later formally be approved when they are sold, the approval is contingent on the building being renovated to meet the often more stringent standard at that later time. This bill extends the application of the Building Act 1972 to buildings on unleased territory land.

After this financial year, independent private certifiers will be employed on all new ACT government building projects on leased and unleased land. There may be some additional cost involved in some of these projects due to the hiring of a private certifier. However, this will be offset by the benefits to be gained by having buildings meeting the relevant standards now rather than having to later renovate them to meet existing standards then.

The extension might have potentially required a number of structures such as bridges, dams, culverts, light poles, playground equipment to be formally approved also. However, the Building Act was not considered an appropriate mechanism for the regulation of these structures, and they have been exempted.

Civil engineering structures such as bridges, dams and culverts are constructed in accordance with quality assurance provisions in contracts. In addition, private certifiers are qualified to assess buildings but are not generally qualified to assess civil works like bridges and dams. It is proposed that relatively simple structures such as light poles and playground equipment be exempted, with conditions placed on their installation.

The bill allows the Commonwealth to seek an approval under the Building Act, although it will not be bound to do so. I will continue consultation with the Commonwealth regarding the possibility of amendments to Commonwealth legislation to bind the Commonwealth government in relation to buildings in the ACT.

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

Health and Community Care—Standing Committee
Inquiry into elder abuse

MR QUINLAN (10.39): I move:

> That the resolution of the Assembly of 11 May 2000, as amended on 30 November 2000, which referred to the Standing Committee on Health and Community Care the prevalence of elder abuse for inquiry and report, be amended by inserting after "options to prevent elder abuse" the words "including unreasonable financial demands for accommodation,".

Several members in this place have been lobbied by residents of a particular retirement village regarding quite significant changes in the financial arrangements that are being imposed by management. I have met with the residents, as have a couple of other members in this place, Mr Speaker, including you, I understand. I have also of recent times met with the management of the particular village, and I have been in touch with the Office of Fair Trading in the ACT to ensure that the matter is being handled in a sensible fashion.

I do not think it is necessary to drag the name of the retirement village into this debate, but it is clear that a great variety of arrangements are set in place for residents who spend their life savings to buy into a retirement village. Those life savings are forfeit as time elapses during their stay in that village, so that neither they nor their estate can recover the full price paid for that residence. There are various arrangements as to whether capital gains are included in the recovery on disposal of a unit, and there are corporate fees and an agreement on facilities that will be provided.

Virtually all of those questions are open to debate in this case. The Office of Fair Trading have informally advised that the code of practice that governs these arrangements is relatively new. It has been in place for a year and a half or so and may need review.

I have looked at the various arrangements that can be made and the various facilities that are provided for corporate fees. I live in a town house development and pay corporate fees, so I have some idea of what the prices should be. I think there is room for the committee to look at this matter in a rational way, to look for a greater degree of consistency and a greater degree of protection for residents of retirement villages against sudden change.

For some people in a village, it may be quite cheap and a good deal, but unless they are aware that circumstances could change dramatically overnight, they may commit all their resources to a unit and then find it difficult to sustain themselves and maintain their position in that village. At the same time they are captive because, by virtue of the contract, they have forfeited some of their life savings, to the point where they would probably be unable to find anything like that accommodation anywhere else.

There is a need to review this matter and to ensure that there is a structure to protect people from this ex post change. Should there be any ex post change, there should also be some protection to ensure that it is implemented on a phased basis or a gradual basis so that people do not fall short of basic needs because of insufficient disposable income. I commend the motion to the house.

MR MOORE (Minister for Health, Housing and Community Services) (10:44): The government will be supporting the motion. I wonder whether Mr Quinlan spoke to Mr Wood, the chair of the committee, about this. It was not so long ago that Mr Wood was saying that the committee was so overwhelmed with work that he was not able to do any further inquiries. Granted that this is an extension of a current inquiry, I am sure Mr Wood will be able to manage.

I have been speaking to some people following a small article on this issue in the paper on Monday. They are concerned to ensure that the retirement village they are involved with was not seen to be the one in question. The people I speak of are from Villaggio Sant'Antonio. They are very keen that it be understood that that is not the retirement village involved.

I was involved in opening a part of Villaggio Sant'Antonio about a year ago. Mr Berry, Mr Hargreaves and a few other members were there. All of us recognise the importance of these villages operating properly, so we are quite comfortable about supporting the motion of Mr Quinlan.

MR QUINLAN (10.46), in reply: Through you, Mr Speaker, I assure the minister that I spoke to Mr Wood before I put this proposal forward. Having agreed with him that it was the proper course of action, I wrote and advised Mrs Burke and Mr Rugendyke, who are the other members of the committee, of my intention. So they were advised in advance. I commend the motion to the Assembly.

Question resolved in the affirmative.

Standing committees
Alteration to resolution of appointment

MR MOORE (Minister for Health, Housing and Community Services) (10:47): I move:

> That the resolution of the Assembly of 28 April 1998, as amended on 25 November 1999 and 7 December 2000, which appointed the General Purpose Standing Committees for this Assembly, be amended by:
> (1) omitting "asset management" from paragraph (1)(a), substituting the following words "purchasing policy"; and
> (2) omitting "government purchasing" from paragraph (1)(d), substituting the following words "infrastructure and asset management".

I have spoken to Mr Quinlan about this, and my understanding is that he is comfortable with a relatively minor amendment to clarify the way the general purpose standing committees of the Assembly operate.

MR HARGREAVES (10.48): Mr Speaker, the opposition will be supporting this motion.

Question resolved in the affirmative.

Gambling—Select Committee
Report

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

> That the report be noted.

MR KAINE (10:49), in reply: If nobody else wishes to speak, I will do so, merely to round off the result of work that was done two years ago. The committee's report was tabled in March 1999, and the government tabled its response to it in June of that year. Since then much has happened in dealing with the matters that this report addressed.

There are, however, still some matters in abeyance, and they are significant ones. One is the question of whether or not poker machine use should be extended beyond clubs, whether or not the existing monopoly held by clubs on poker machines should continue. It was a recommendation of the report not that that should not be done but that considerations needed to be taken into account before it was done. I will read the recommendation:

> The committee recommends that access to poker machines not be extended beyond clubs until research has been conducted on:
>
> the current prevalence of problem gambling in the ACT;
> the relationship between problem gambling and the prevalence of poker machines;
> the demographics of hotel customers compared with club members; and
> the likely social impacts if class c machines were allowed in ACT hotels and taverns.

Along with that recommendation—which has not yet been considered by the government, to the best of my knowledge—there was another recommendation, recommendation 3, about the cap of 5,200 machines that was applied to prevent the further proliferation of poker machines until some research had been done into the general subject. That cap, imposed when this inquiry was completed in 1999 and still in force, ceases to be in force after 1 July this year, unless something is done to extend it or alter it. But as I have noted, our recommendation No 14, about whether machines should be allowed outside the clubs in the general sense, has not yet been addressed, and the research that was a prerequisite to a further consideration of the subject has not been completed.

I was briefed quite recently by the Gambling and Racing Commission, which was established as a result of a recommendation of this report. I was briefed by the chairman of the board and the chief executive officer only a few weeks ago as to where they were with a number of the recommendations that still remain to be put into effect. As required by one of our recommendations, they are engaging in a research program and a data collection program about the sorts of things we dealt with in the report—the prevalence of problem gambling, the relationship between problem gambling and the prevalence of poker machines, and the like—so that we can have some sure knowledge about these things in the ACT.

Doing our inquiry two years ago, we discovered that no research had been done in the territory about matters of this kind, and we had to draw on experience in places like South Australia and New South Wales, which may or may not be directly translatable to the ACT situation—probably not. There is much yet to be done. The research program is in progress, we understand.

There is still a time limitation—1 July, from memory—on the current cap that was imposed on the number of poker machines, and that cap will cease to apply from that date. Of course, it is within the power of the government or the Assembly to further extend that cap or to make some other decision about it. The idea two years ago was that the research would be completed before 1 July of this year and decisions could be made about these other issues in light of proper information and good research and data collection in the territory.

I suppose those of us who were members of the committee will continue to monitor the outcomes of the activity being undertaken by the Gambling and Racing Commission to implement these recommendations, so that we do not allow them to fade away and never know whether they are achieved or not.

A current topic that has not gone away is interactive gambling. We are still waiting with some interest for some Commonwealth action in connection with some aspects of that. While much has been done in the last two years since this report was tabled, there still remains much to be done, and we should not allow these questions to go off the agenda.

Another recommendation I would like to refer to again is the one that there should be a review of legislation governing clubs. It was pretty clear to us that since poker machines and "clubs" go hand in hand under our existing legislation then it is necessary to clarify, after all these years of the use of poker machines, just what constitutes a club. At present clubs are so loosely defined that almost any group of people who get together and form an association for almost any common purpose can define themselves as a club and, technically, once having done that, they could seek poker machine licences.

There are some issues about the legislation currently governing the operations of clubs that I think need to be reviewed. They are a bit antiquated. They do not necessarily reflect the situation that applies today, as opposed to the situation that applied 20 or 30 years ago. I feel that that was a significant recommendation. I am not quite sure what the government has done about it, if anything. Perhaps the minister could inform us what is happening about the review of club legislation.

By and large, some good work has flowed from the committee's inquiry and report two years ago, although, as I have said, we need to keep a continuous watch on some of the issues that have not yet been resolved. One of the crucial ones is the 1 July date, the drop-dead date for the cap on the number of poker machines. We will have to consider that some time before 1 July and decide what, if anything, we wish to do about it, rather than just let it lapse.

MR RUGENDYKE: I seek leave to say a few words on this issue, Mr Speaker.

Leave granted.

MR RUGENDYKE: It is no surprise that my view on poker machines in this city is that there are far too many. We need to make sure that there is no expansion of machines in the ACT. Since the committee conducted its inquiry in 1999, I have become more firmly of the belief that poker machines are a blight on our community and that we should do everything we can to make them less attractive to people and to make them unavailable to other premises or places in our fine city.

I support the recommendations in the committee's report and put firmly on the record my total abhorrence for these insidious things.

Question resolved in the affirmative.

Urban Services—Standing Committee
Report No 22

Debate resumed from 20 April 1999, on motion by Mr Hird:

> That the report be noted.

Question resolved in the affirmative.

Chief Minister's Portfolio—Standing Committee
Public Accounts Report No 17

Debate resumed from 12 April 1999, on motion by Mr Quinlan:

> That the report be noted.

MR QUINLAN (10.59), in reply: This report relates to 1997-98. You would have to say, "Those were the days." According to this report, the International Hotel School will be breaking even by the year 2001; the government's total commitment for funding for Bruce Stadium is $12.3 million; CanDeliver's result is considered acceptable and CanDeliver is expected to be in profit tomorrow; InTACT will be profitable in the near future; the government will provide $200 million to superannuation funding over the next four years; and Canberra Hospital cost overruns only reflect increases in patient throughput. As I said, those were the days.

The government's response to a number of these issues was that the Auditor-General did not issue a qualified audit opinion; therefore, everything was okay. It did not matter about the information content or the bottom line. We did not get a qualification.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): Mr Speaker, I seek leave to speak on this matter.

Leave granted.

MR HUMPHRIES: I only want to note that the issues raised by Mr Quinlan certainly must have weighed heavily on the minds of the electors in February 1998 when they reflected on the achievements of the government and deliberately and emphatically returned us to office.

Question resolved in the affirmative.

Urban Services—Standing Committee
Report No 25

Debate resumed from 6 May 1999, on motion by **Mr Hird**:

> That the report be noted.

Question resolved in the affirmative.

Report of the Review of Governance—Select Committee
Report

Debate resumed from 30 June 1999, on motion by **Mr Osborne**:

> That the report be noted.

Question resolved in the affirmative.

Standing committees
Proposed reference—2001-2002 draft budget

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (11.02): Mr Speaker, I ask for leave to move a motion referring the 2001-02 draft budget to the Assembly's general purpose standing committees for inquiry and report.

Leave granted.

MR HUMPHRIES: Mr Speaker. I have circulated a revised motion that seeks to refer proposed initiatives for the 2001-02 budget to the Assembly's general purpose standing committees, together with capital works proposals relevant to those portfolio areas.

Members will recall that the government announced last year that it was revising the process for putting the draft budget for the 2001-02 financial year on the table and consulting about it following comments made by the Assembly committees which considered the 2000-01 budget. The government indicated that it wanted a process which would see general public discussion about the direction the government is taking, about specific initiatives and about capital works proposals.

The government also noted that there was intense criticism of the first draft budget process, and decided that it would revise its process to address those concerns. As members are aware, this has manifested itself in the breaking up of the budget consultation into two phases, not counting the third phase, of course, that comes after the budget itself is actually presented.

The first phase was the establishment of a select committee on budget parameters for 2001-02, which met last year and reported in December. The government expects to respond shortly to the recommendations made in that report. The second phase is now the referral of the draft budget and issues which have this week been tabled by the government to the general purpose standing committees of the Assembly.

Members of those committees will be aware that I wrote to all general purpose standing committees, inviting them to take part in the budget process in such a way as to contribute to discussion and debate about the priorities laid out and full new expenditure. I have to record that one committee, the Standing Committee on Finance and Public Administration, wrote back to me indicating that it was prepared to undertake that inquiry. However, other committees indicated that they had a concern about the limitation the standing orders placed on their capacity to undertake such an inquiry when it might be considered to be outside their terms of reference.

Mr Speaker, for that reason, today I bring forward the motion on the table at the moment to provide for consideration of those issues in such a way that standing orders are not offended. We cannot have standing orders offended, can we? This motion refers the initiatives to the Assembly committees, but it provides the Assembly committees with an option.

Members will recall that there was concern—and this was reflected in the recommendations of the budget parameters committee—that there would be differential treatment of the budget recommendations and budget initiatives by the different committees, and the subcommittees might choose not to take part in the process at all. Therefore, what the government is doing in this motion is offering each standing committee a choice. Every standing committee receives the initiatives under this proposal, both the initiatives for spending and the initiatives for capital works; indeed, the entire capital works program. The committees have the choice of reporting on those initiatives or of declining to take part in such an inquiry and making no conclusion about the initiatives referred to it.

I am going to take each of those proposals in turn. The first of those proposals is based on the reality that the process will work only if committees operate within the global budget that is allocated to each portfolio. If people choose to say, "We note the priorities the government has brought forward, but we have a shopping list of our own," and decline to marry the two, then the process clearly will not work. The exercise would not work at all in that situation. I address my comments here, I suppose, more to the crossbenchers.

I believe that people in the ACT and members of the crossbench, in particular, want to see a process work whereby governments do, on a regular basis, put their proposals for their budgets out on the table for scrutiny and comment by the public of the ACT. I have no doubt that, after the first round of this exercise, there is strong community support for that. Indeed, all the community groups that we spoke to—the Council of Social Service and other stakeholders in education and in health—said that they wanted to see this process continue in some form, although they recommended some changes should take place.

They wanted to see the process continue, and so do we. So what we have here is, first of all, the option of making recommendations that are consistent with the global budget. A committee can take the recommendations and say, "We agree with these. We do not agree with that. We think something else is actually a higher priority for new public money," and they can rearrange the priorities within that framework. That is the nature of the exercise, in fact, that was referred to committees last year.

Mr Berry: You are just a joke, Gary, and everybody is laughing at you.

MR HUMPHRIES: I know that you are very reluctant to engage in public consultation about this, Mr Berry. You are very much on the record about that, but I think there are others who want to make this work. I think that the community as a whole will support this sort of process.

The second option is the option of not taking up the budget at all. Why have we put that option on the table? It was very clear that some committees, particularly, I might say, committees dominated by Labor/Green members of the Assembly felt that it was inappropriate—

Mr Quinlan: How many is that?

MR HUMPHRIES: The health committee, for one.

Mr Moore: No, the education committee.

MR HUMPHRIES: I beg your pardon, the education committee.

Mr Wood: Hang on. You are talking in very general terms about things you do not remember well, Mr Humphries.

MR HUMPHRIES: Thank you, Mr Wood. Mr Speaker, those committees obviously felt very reluctant to take on board—

Mr Wood: This is what you want to stand up and say. Your whole process is designed for you to be able to stand up and say this. That is what it is all about.

MR SPEAKER: Order! You will have a chance to put your views forward shortly, Mr Wood. Mr Humphries has the floor at the moment.

MR HUMPHRIES: Some committees are obviously reluctant to take part in that process. They obviously do not want to have thrust on them an involvement in a process with which they obviously feel profoundly uncomfortable. I am not proposing in this budget process to make those committees do what they do not wish to do, so the option is there for them to decline to take part in the process.

But there are only two options presented and, with respect, that is the only way this process will work. We have the option of either being involved and contributing to the exercise under the terms that the Assembly laid down last year and, if you pass the motion, we will lay down again this year, or the option of opting out altogether. Either way, it has been the government's decision in each of these two years to make this

process work through Assembly committees, and we have perhaps a misguided sense of confidence that the committees do have the capacity to show leadership in respect of this process and embrace the challenge and the responsibility that go with discussing, reconsidering and reprioritising the government's priorities as laid down in the draft budget.

I know that those opposite are deeply opposed to this process. They are opposed to this process, I should put on the record very clearly, because they are terrified of the prospect that, should they inherit government in October this year, they—

Mr Wood: We will not inherit it; we will win it.

MR HUMPHRIES: I am pleased to see them assert that so confidently. Let the record show that they say that they will win government in October this year. Fair enough, that is their view. If and when they win government in October this year, they are terrified of the prospect of also having to work with a draft budget consultation process which is well established, which the community has become used to and which people actually like.

I acknowledge their motivation for this. I can understand it. It is a very conservative line. It is a line that runs very much along the conventional Westminster line. It is a line that does not respond to the reality that the ACT community is more articulate, more sophisticated, more educated and better able to take part in such debate than other communities. It is also a line that fails to understand that this community is changing, that people expect more say in the affairs of government, and they expect to have some regard taken of their views in this process.

For my part, I think it is arrogance in the extreme to have a process which essentially excludes people altogether until the final document is handed down. Even then, if governments say, in effect, as they often do, "Leave it as it stands. Do not change a word lest the process become one of other people manipulating our process," we have to go beyond that. I think we have the chance to evolve the democratic experience here.

The foundations of government were not rocked last year by the experience of a draft budget process. Life went on. The budget itself was changed as a result of that. Parts of the budget were changed. It reflected the input that people had during that process, and I think it can happen again successfully. This year we have had the experience of having the budget parameters considered already by an Assembly committee, as the Assembly wanted last time. Now we have the chance to have a look at the detail of the initiatives, and I would urge that on members as a suitable way of dealing with this matter.

I also note that there was discussion and negotiation with Assembly committees—at least, the Assembly's Standing Committee on Finance and Public Administration—about the timetable for this process, and we suggested late last year a suitable timetable which I thought we had agreement on. We have since had comment from Assembly committees that the timetable was too tight and they do not have the time to do it. Members will note that we have extended the period of consultation by a further week to 23 March. I hope that that will alleviate the concerns of some members about their capacity to take part in the process.

Whether they take part or not, Mr Speaker, let me make one thing quite clear: this process will go on, and it will go on with the cooperation and the support of ordinary members of the ACT community, because they took part last year and they tell us they want to take part again this year. Whether Assembly committees are involved a matter for them. I believe this motion facilitates their involvement if they wish it and, if not, we have the capacity here for the process to go on without the committees' involvement. It is entirely up to them, but I do urge this motion on the house and hope that we will have support for a revised consultation process on the 2001-02 budget.

MR SPEAKER: Chief Minister, you should formally move the revised motion that you have circulated.

MR HUMPHRIES: I move:

> That, notwithstanding the resolution of 28 April 1988, as amended on 25 November 1999, 7 December 2000 and 15 February 2001, which appointed the General Purpose Standing Committees for this Assembly:
> the 2001-02 draft Budget initiatives and the 2001-02 draft Capital Works Program for each appropriation unit be referred to the relevant General Purpose Standing Committee, for inquiry into and report by 23 March 2001 with either:
> (a) recommendations that maintain or improve the operating result; or
> (b) a conclusion that the Committee will not proceed with the consideration of the 2001-02 draft Budget initiatives and the 2001-02 draft Capital Works Program;
> the relevant draft budget documents be provided by the Treasurer to the Presiding Member of each Standing Committee by close of business Friday, 16 February 2001;
> if the Assembly is not sitting when the Committees complete their inquiries, the Committee may send their reports to the Speaker or, in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing, circulation and publication; and
> the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

MR KAINE (11.18): Mr Speaker, the matter before us is an important one, and I hope that it will not be dealt with in terms of political attitudes to the budget, as the Chief Minister implied. We have just concluded a debate on the report of the Select Committee on the Report of the Review of Governance, and one of the recommendations was that this draft budget process be adopted. The government accepted that recommendation and we have just concluded the debate and nobody spoke against it, so presumably the Assembly tacitly accepts the draft budget process that the government tried last year and is proposing again this year. I do not have any great objection to that, as long as the premises underlying it are clearly understood and everybody knows what is going on.

There is always going to be a short time scale attached to committee consideration of the draft budget at this stage, because the government has to conclude the budget, get it on the table and passed before the end of June, so we are always going to be constrained by time. That introduces some significant problems because, if it is the government's view that consideration by the committees is the only mechanism through which the community can make its influence felt, it places a very heavy onus on the committees to satisfy the community need in a very short time.

If it is not the government's contention that the only way that the community can make its submissions is through the committees, then that is a different game altogether. So we need to be clear on what the process is, and the community needs to be clear. People in the community need to be clear that, if a committee is considering part of the budget that is of relevance to them, they can make their submissions through the committee, if they have the time to get their submissions together, submit them to the committee, then come in and discuss them. If they still have the option of taking a little longer, they can bypass the committees and go directly to the government.

If that option is still open to them, then they need to know that, because my recollection is that, not only were the committees constrained by time last year, but also community organisations sometimes felt that they were constrained by time, bearing in mind that some of them only meet once a month. Once a committee announces that it is conducting a hearing, they have a problem getting together, putting a submission together that is acceptable to all the members, and getting it in to the committee in sufficient time for the committee then to say, "Come in next week and talk to us about it." I think the problem is not the process in principle, because I think we have all tacitly agreed to that. The problem seems to lie in the mechanisms that are in place to make it work, and there does not seem to have been a great deal of thought given to that yet.

I have some concerns about the option of a committee saying that it will not consider the budget. I think we probably have an obligation to consider it. If we do not say up front that we are not going to, I do not think it ought to be left until some further point down the track when the government refers part of the budget to a committee and the committee then says, "Sorry, we do not have the time" or "We do not have the resources" or "We are not going to do it." It should be stated up front whether a committee is going to consider it, otherwise I think it is unfair to the community, whose members will be even more uncertain as to where to go if they have any comments to make.

We have to have an agreed machinery for dealing with the budget. It does not seem to be in place at the moment. We are still experimenting, still working on an ad hoc basis. I think that the motion passed by this house in connection with this matter needs to be explicit. It should not be left open for committees to decide later whether they will do it. Until that matter is resolved, I think this is almost premature.

I notice that the Chief Minister has extended the time. My original understanding was that we would have the budget about now and we would have about four weeks, including two sitting weeks of the Assembly, to deal with it. The Chief Minister has extended that, I see, by about another week, so it does take the time pressure off a bit. But there is still pressure on the committees to find the time and the resources to deal with this matter along with all the other work that they do.

Bear in mind that at the moment there is only one committee of this house charged with dealing with budgetary matters, that is, the Standing Committee on Finance and Public Administration. The others are not. One has to ask, and I think one of the committee chairs may have raised this subject, whether committees that took budgetary matters into consideration were working outside their terms of reference. I think that is a matter that needs to be resolved.

Can any committee take a part of the budget and deal with it within their present terms of reference? I am not certain that they can. Has anybody asked the Clerk for an opinion on that? I am not sure whether they have. There are serious matters connected with this matter and, as I said at the beginning, I do not think that the objections to it are based on some political ideology or ideological approach to the question of budget-making. The problem stems from the mechanics of how it is to be done, and I do have some difficulty with that too.

I think that we may be leading the community to believe that the committees can be very powerful in influencing the outcomes of the budget when perhaps they are not because of the time constraints and the other constraints that apply. If the community has this false impression about the possible outcomes of their making submissions through the committees, I think that would be most undesirable.

I will not oppose the Chief Minister's proposals, but I do think that there are some major questions that need to be dealt with and, as I say, they stem from the way that we deal with it, rather than the general principle of whether we do or do not..

MR QUINLAN (11.23): During his speech, the Chief Minister and Treasurer talked about this process. I just want to revisit that. I do believe the process is a sham but, on the other hand, I have to congratulate the Chief Minister and Treasurer because, at the same time as being a sham, it is a fairly clever political manoeuvre. I do not say it is clever–intelligent; I just say it is clever–devious.

To make that point, let me go back to last year's draft budget, when we introduced the process. What we saw there was virtually a month or six weeks of progressive leaks which, quite obviously, turned into firm commitments once they were out there. We then saw a draft budget come forward with a very modest result and a restriction on the committees to which it was to be referred about what they might or might not do within that budget, so much so that they were virtually required to cut one program to bring in another, which I think is really the responsibility of the government of the day.

We did see the actual budget come down and—surprise, surprise—the revenue effort had improved considerably, but the bottom line had not changed much because the government was able to devote more expenditure to so-called initiatives. We saw the beginning last year with, I think, building social capital, where we had in the order of $3 million spread over 19 programs, which effectively meant 19 photo opportunities and 19 program launches. I rather figured that, by the time we had paid for the tea and bickies for those program launches and the glossy brochure that told you what your government is doing for you, there really was not much going to a program.

But it started the process of papering over the cracks. Sometimes, we in here play what we call buzz word bingo. I will give you a couple of buzz words right now—negative hygiene, which used to be used in management studies to describe a process where you do things that are actually of no benefit, but they forestall criticism. This government seems to have launched itself into that process with this whole scattergun approach a year ago, which appeared, I have to say, well after the draft budget process had been conducted.

This meant that it was rather a hollow exercise in terms of what the real budget and what the government's real intentions were, but it still made noises about there being an open consultative process. In fact, at that stage, early in the piece, the Treasurer was saying, "What we are doing is allowing the people to consult through the committees," which means, "Do not bring the unwashed to me. I will divert them to the committees and they can do the interaction."

Then we pointed out, quite logically, that that system does not actually work because we know that, with the best will in the world, committees cannot relay precisely what community groups have said without some of the Chinese whispers-type impact on what is said and our own political standpoints, where we would quite obviously interpret what has been said. We would possibly hear selectively, even if we were not trying to do that.

So last year's effort was a bit of a sham, but what it did do for the government was that it allowed the government to claim that we have a consultative process, when it was actually moving in the opposite direction. It also condensed the time that the Assembly had to run the estimates process. That is what the government does not like. This does not like the actual scrutiny of what it is really doing, so it has to try to invent methods of keeping committees occupied, saying, "Put up or shut up" because it does not want an exposed examination of what it is doing.

This year we had an extra overlay with the budget parameters select committee, which did a fairly creditable job with what it had to work with. Nevertheless, there is another phase and there is another consumption of time in the scrutiny of government process. This year, with the hypocrisy of putting out budget leaks before the draft budget came forward and went through that so-called consultation and review by committees, that has intensified.

The process was not quite so ordered this year, of course, because we had a productivity commission report, which meant that there was another crack—a very large crack—in relation to education to paper over promptly. It was a bit less orderly, but nevertheless the same negative hygiene process was in place where the government was just trying to cover bases.

Now we have reached the stage where the government has enough information to go public on a wad of press releases about initiatives and reinvesting in the Canberra community—again, the scattergun approach. Also, we have seen in this approach an increase in the practice the government employed last year of bulking up expenditure, so now the government does its forward estimates and says, "We will call that line in the budget a program, tot it all up, and say we are going to spend $10 million this year, but we are going to spend $50 million overall," and the government announces a $50 million program.

I have just had a quick glance at the documentation because we have not had it long, but I get the impression—and I think it is pretty right—that the most commonly used phrase in this set of press releases from the government is "over four years". This is not the draft budget; this is, again, the whole scattergun approach, garnished with the bulking-up approach to again paper over as many cracks as is possible.

Here we have: "We have a problem here. We have a problem there. We will throw a little money at that. We will probably have a launch at some time this year on that. We will probably have a glossy brochure on that saying, 'This is what your government is doing for you,' and we will have the photo opportunity and probably not a great deal of result."

This week this documentation was released at a press conference held by the Chief Minister and Treasurer and it was not issued to the Assembly. The Assembly was not advised at all, not even after that press release. There was no attempt to give to the Assembly even the advice to the media so that there would be balanced public debate and that scrutiny and accountability that arise out of debate and the various parties in a parliament taking opposite positions and teasing out the various elements of an issue. We do not want that, and that really is what a large part of public accountability and consultation is about.

This is about the government not wanting to do that; in fact, it quite consciously avoids that process, to the stage where we are now debating referring a document to the committees, a document that will be along tomorrow.

Mr Stanhope: Why tomorrow? Why close-of-business tomorrow? Because the debate is over.

MR QUINLAN: This is the fairly transparent game that the government is playing with us and with the media. Quite frankly, if the media does not crucify the government in the next few days over at least the processes of this week, I will be very disappointed, because it has been a very cynical exercise. To run a press conference—

Mr Berry: Look forward to a bad day, mate.

MR QUINLAN: I live in hope. This process has been about showing the government in the best light possible, again with this scattergun approach and this bulking up—everything is a program nowadays.

Mr Stanhope: Why 5 o'clock tomorrow?

MR QUINLAN: As I said, this is a cynical approach. *(Extension of time granted.)* It is designed as a PR exercise, the whole lot of it. Joseph Goebbels would have been proud to be if associated with this. I think that he would have been proud. I know that this motion in some form will be passed. The conservative majority in this house favours the process. I have to say that over the last year or so, the decision having been made by the Assembly, as a member and as chairman of the Assembly public accounts committee, I have made my contribution to the process.

It is always within the government's interest to say that they were a waste of time, again because that is what it is, a propaganda exercise, a PR exercise. If I actually felt that this process would make a positive contribution and that there was a sincere desire to do so, I would participate in it wholeheartedly. However, it is a manipulative process, manipulative of the media and manipulative of the Assembly, and has treated the Assembly abominably this week because the press conference was yesterday and we are going to get the draft budget tomorrow.

That is bizarre in the extreme and a precedent. I reckon there might even be a masters thesis in it for somebody one day about how the government got away with it. As I said, I do consider this process to be something of a sham. I do believe that it a PR exercise in the extreme and fairly transparent at that but, if instructed, we will abide by the decisions of the Assembly and I will do so as chairman of the public accounts committee.

MRS BURKE (11.36): This innovative process, far from being a sham and a scattergun approach, is a triumph not only for this government but also for the wider community as a whole. This process will also allow me, as a non-executive member, to have input. Remember, too, that the word "triumph" is made up of two parts, "tri" and "umph", something, sadly, that this opposition has not grasped hold of. I sense the opposition is smarting at such innovation.

MR WOOD (11.37): Once again, Mr Humphries is trying to have the best of both worlds. First of all, he wants to be his best and go out into the community and say, "We are a government which consults. We want to talk to you. We want to talk to the Assembly. We want to talk to people to hear what they have to say." The other world he wants the best of is being able to criticise the opposition and say that we do not want to consult, that we do not want to do that, and how mean and nasty we are.

Mr Moore: And secretive.

MR WOOD: Whatever you like. Whatever words you want to use, you use them. And he has carefully designed a process to enable him to get the best of both worlds, because he has delivered, again, a very limited process. Last year, I have to say as chair of the health committee, we worked very hard to try to accommodate that process.

Mr Moore: I acknowledge that.

MR WOOD: Mr Moore acknowledges that now, as he did then. Did you hear that, Mr Humphries? We will do the same again this year, I expect. Last year there was limited time, but we did write to every community body we could think of. We took a great number of submissions, we had hearings, we listened to people and we responded. The timeframe is reduced this year, I think deliberately so on Mr Humphries' part, although now extended a little.

The committee will sit down, as soon as it is able, to work out what it may do. But it is designed to make life difficult for those participating in meaningful consultation, or giving deep consideration to it. Last year the health committee—I think other committees did the same—indicated that, with the resources we had, it was very difficult to do the work. You know what resources we have. All your committees are the same. We made a recommendation that, if this was to be a continuing process, then committees ought to get more resources and, as I look again at the recommendations, we sought to get a better intent from the government to help in this consultative process.

We sought more advice from government and all sorts of things. There were a large number of recommendations made just on the process. So we were interested and concerned about it. But, in fact, instead of the process becoming more effective this year,

it has become more difficult, and I think deliberately so. Once again we have to go back and do the very best we can.

They are important issues. The committee is willing to be cooperative, but Mr Humphries is making it so difficult for us. My colleagues may say something. Certainly we will be around the committee table looking at this. There are concerns. Mr Humphries will go on his merry way, deliberately, consciously and maliciously getting the best of both of worlds. It is unnecessary, undesirable and unprofessional and is not a way of advancing the esteem and the prestige of this Assembly.

MS TUCKER (11.40): I move the amendment circulated in my name, which reads as follows:

> Paragraph (1), omit all words after "23 March 2001", substitute the following words "with recommendations that maintain or improve the operating result;".

A couple of points have to be made here, I believe. First of all, I am surprised that Mr Osborne did not move the amendment that I moved, because the draft budget committee's first recommendation was, in fact, that the process through which standing committees could look at the government's draft budget would not be an optional process for committees, depending on the whim of each committee.

The reason that that recommendation was made was that it was the view of the committee that it was very unfair to set up a situation where some members of the community could have an opportunity to consult with a standing committee of this parliament and others could no. It was also thought that it may well be the case that the chair of each committee would realise that anyway and choose to take on this particular work of looking at the draft budget, because they would realise that it would be an unacceptable situation if some did and some did not.

But the point is that it is the Chief Minister who has continued to support the optional process, so he and his colleagues obviously do not have any sympathy for that argument. It is quite insulting and, as Mr Wood said, it would be a very poor reflection on this place if some standing committees were inviting the community to consult and others were not. Of course, Mr Humphries' response to that is, "That is on their shoulders," which is a very irresponsible attitude in my view, because he has a leadership role here. He should know quite clearly that he needs to make sure that processes are good and respectable, basically, and will give the community confidence in what we are as a parliament.

I have heard Mr Humphries, Mr Moore and others on the other side of the house accuse other people many times of bringing this Assembly into disrepute and people being accused of going back to the bad old days, and so on. I have heard that across the chamber on and off. I agree that it is really important that we always behave in this place in a way that will inspire confidence in the community. I think it is of concern that the Chief Minister would take the approach that committees can look at it if they want to and, if they do not, that is their problem.

The point is that this is a new process. It was decided by this parliament that we would trial a draft budget process. It is an innovation, as Mr Humphries said, in how parliaments work. The Greens supported that because we are interested in looking at

different ways of including the community and the skills and expertise of this parliament in the workings of government without, of course, sacrificing the very important accountability aspect of the Westminster system.

There is always going to be that discussion and debate when you talk about including all members of the parliament and of bringing in the skills and expertise of every member of this parliament, where possible, to find good-quality positions for the people of the ACT, against losing the scrutiny aspect of the Westminster system. That is, we cannot be coopted to the point where we cannot actually scrutinise the government of the day.

That is the balance, that is the dilemma, of entering into these sorts of processes. I do not think it is impossible at all, and I think that is why the Greens took the position that we were happy to work with this process and look at it. I will remind members that the Greens' position was for a standing committee that consistently looked at the financial matters of the territory. It was to be like an estimates committee, but it was a standing committee and always in place, which had that responsibility to oversee and be aware of the financial situation of the territory.

There are some issues that are of concern in this regard, too, and they are human resources issues. As members well know, there are not enough people in this place to adequately set up new standing committees. Maybe we will get more members eventually. With 21 members we could look at it again. But that is a problem.

The Greens supported working with this situation. Mr Humphries then came out with a proposal last year, which was that the committees would not be able to make recommendations other than those that maintained or improved the operating result within the portfolio area. I made it quite clear last year that that is not a sensible way of looking at decisions on expenditure. Clearly, you have to be able to look at overall expenditure. There are also the questions of revenue.

Mr Humphries said that he had responded to that by introducing the concept of the draft budget committee, which has just completed its deliberations. We have not had the opportunity to finish the debate on that aspect. I have not spoken on it. Mr Quinlan said that he thought that the process was reasonable. I will not, at this point, go into detail on my response to that process, but I am not totally enthusiastic about it, mainly because of the timeframe that we had to work in.

As I said, basically what we said in that committee was that we did not think this should be an optional process, so my amendment is doing is actually deleting subparagraph (b) of paragraph (1) of the motion, which makes consideration of the budget initiatives optional. Mr Humphries apparently has been gracious enough to give us an extension of time. Mr Kaine said that it was a week. From memory, the date was 21 March originally and it is now 23 March. Two days is not very significant.

Mr Humphries: It is from the 16th.

MS TUCKER: Mr Humphries says it is the 16th; he may be right. I do not think it is; anyway, the timeframe is still very short, which is major concern, because if you are going to be genuine in your commitment to consulting and having these processes, you have to allow enough time.

I have said to Mr Humphries off the record, talking to him privately, that it may be that we will not have enough time. It may not be the government's fault. They are claiming that they cannot do it in any other timeframe. If that is the case, then that is something we have to look at as a parliament. If there are not going to be enough days in the year for these processes to occur, giving enough time to do them properly, then let us think about that and let us talk about that.

I will certainly want to see this amendment supported and I will be voting against this whole motion today because of the concerns I have about the time in which we would have to do this work. I know how hard the community organisations which put in submissions to our committees work to come up with thorough and comprehensive submissions. I know how they work within their groups. I know how long it takes for them to consult with their members. It is really unfair to expect them to come up with submissions to committees in that time.

I know that Mr Humphries is going to put out a press release saying that the Greens and Labor do not care about consultation. He has already done it. I just have to make the point clearly and hope people understand that this is actually quite a sham. It is insulting. Mrs Burke thought it was really a good process—innovative and exciting. Mrs Burke has not worked in committees yet. Maybe she does not know how much work is involved. Maybe she does not realise how frustrating it would be to try to do a good job on this very big area of inquiry in about two weeks.

I think we need to make it quite clear that we will treat the community with more respect than that and that we think it is very bad for this Assembly to engage in these sham processes for political ends. I know it is an election year and there are going to be a few media releases coming out, but this is about the credibility of this parliament and I find it very concerning that it is so lightly regarded, particularly by the Chief Minister.

MR HARGREAVES (11.50): You are talking about this exercise being part of the consultation process. Both sides of the house and the crossbenches do not have any difficulty with the consultation process. Any amount of appropriate consultation before decisions are made is welcome.

We are being asked to look at the draft budget in five weeks, two of which are sitting weeks. If people want to just go along and sit in their committee meetings, cursorily read the documents and allow the committee secretaries to go away and do the work for them, which in my view is the epitome of bone idleness, then they have plenty of time in the five weeks to do it.

This exercise requires an immense amount of reading, talking to people and thinking. If we were serious about the consultation process, two things should have occurred. The period should have been extended, and the information should have been provided already.

Mr Humphries: It was extended.

MR HARGREAVES: The Chief Minister has extended it by a week. I have no intention of grovelling in gratitude to the Chief Minister for extending something by a week. A week in politics is a long time, Mr Humphries.

Mr Humphries: There you go.

MR HARGREAVES: That extra week is generosity rejected by me. The part of the process which causes me discomfort is that this government has been trying to turn the committee system into an arm of executive government. It is treating the committee system in the same way as it treats its departmental structure.

The motion refers to "recommendations that maintain or improve the operating result". We know that that is code for "Do not go above the limit of funds which has been advised". What do you think the writing instructions for the bureaucracy are? They are just that.

The standing committees of this Assembly are instruments of this Assembly and instruments of the people, not instruments of the executive. They provide advice to the Assembly, not to the government. Mr Moore—who has been here as long as Mr Humphries, Mr Wood and Mr Berry—has always considered himself a champion of the process of this place. There have been times when I have disagreed with him and thought that he has talked a whole lot of rot, but there have been other times when I have taken on board what he has said because it has made an awful lot of sense. He has been the protector of process quite often in this place. Therefore, I am surprised to see him endorsing the concept that standing committees be turned into arms of the executive.

This motion by Mr Humphries is a nice piece of blackmail. It says, "You can give us some recommendations which do not change the bottom line. You can shuffle the deck chairs around a bit." Yet we know full well that the last time we tried to do this there was an enormous jump in revenue available between the draft budget and the budget. No amount of talking will convince me that the government did not know about that along the way.

Mr Humphries: He said he did not know.

MR HARGREAVES: The Chief Minister said he did not know. That would be the first admission of inability on the part of the Chief Minister. Making committees part of the executive arm has to be knocked on the head.

I come back to the two options. We can shuffle the deck chairs a bit, or we can see what the community feels are the priorities within the set of priorities already determined by the government. We can consider what the community decides they want cut out in favour of something else. In other words, we can be either the starter of a fight between two community groups or the umpire in a fight between two community groups. Either way, the committees get thumped around.

Accountability to the community lies with the government, with the executive—not with you, Mr Speaker, not with us, not with the crossbench, not with the Assembly, but with the executive. That is why the executive are paid twice the salary that Mrs Burke gets.

They accept the responsibility to be accountable to the people for executive decisions. Mrs Burke is not held accountable for executive decisions, although we might see something different after the next election.

The second option is that the committees can say, "No, we do not want to play. We are going to take our bat and go home. Bad luck." The obligation on committees is to report to the Assembly. That option existed last year. We could have said, "Sorry, you have not given us enough information. We cannot report to you on the information you have provided." That would have been fine. It would not have been a breach of standing orders. It would not have been a breach of anything. This stuff is meaningless. All it does is lay the blackmail down in black and white. The opposition's position on whether or not to participate hinges on responsibility and accountability for the budget. It is not our responsibility; it is the executive's responsibility.

The committee cannot go over the bottom line. If last year the available amount grew from about $4 million to $30-odd million, what would be wrong with a standing committee recommending a wish-list to the Assembly, or to the executive if they want to take it from the Assembly? It is the government's decision. They put that decision to the Assembly for ratification in an expression of confidence. It does not promote irresponsibility. It enables the government to find out what the mood of the community is like. It prevents us from having to be the umpire in a fight between two community groups competing for a slice of an imaginary cake.

The government has all the information and has had it for a while. It has put out glossy press releases, but we have to wait another 24 hours, curiously until the close of business on Friday night, to get a look at the detail. It is said that the devil is in the detail. I do not think so. I think the devil has the detail at the moment.

I cannot believe that the Chief Minister and Treasurer can talk about Labor Party arrogance when he has had all of the information and has put out a press release, yet we have to go and knock on his door to get a copy of the documents. Then he refers the documents to the standing committees before tabling them in this place. He could have tabled them on Tuesday, and nine-tenths of the objections to not being told would have dissipated. But he has to do this. I do not know what gets into him. I do not see the need for it. If he wants to get people offside, he has done an excellent job and I commend him for it.

I reiterate that the opposition does not regard standing committees as part of the executive. We do, however, support the concept of consultation in any draft budget process. But we will not be part of the government until after 20 October.

MR MOORE (Minister for Health, Housing and Community Services) (11.59): Having listened to Mr Hargreaves speaking about committees being made an arm of the executive, I am flabbergasted. It is just so much codswallop. It is simply not true. We are here in the Assembly making the decision as an Assembly. If a majority of members decide that they do not want to do this, then the executive will do it in a different way. We are here in the Assembly making sure that it is not done as an arm of the executive. We are saying, "Yes, we understand it is our responsibility. We will make the decisions, but we are giving you an indication of what we are intending to do. You can then tell us whether it is a good idea or whether it is a bad idea. Then we will make the decisions."

As we often say in this place, when you make recommendations to us we take them very seriously. Sometimes we do not agree with them. Mr Hargreaves and Mr Quinlan said that committees are very limited in what they can recommend, because they have to work within the parameter of maintaining a balanced budget. Who set that parameter? An Assembly committee did. For reasons that seem obvious to me, of course we should live within a balanced budget.

Mr Quinlan: Over the long term.

MR MOORE: That is an Assembly decision as well, and it is consistent with the government's position. We do not see it appropriate to borrow.

There is one other issue that it is important to understand. It is the issue of time. Why do we not give you more time? The cabinet wrestled for some time with how we could give you more time. We drew up a Ghant chart. Most of us are familiar with a Ghant chart. It sets out activities running in parallel as you work towards your goal. Our goal is to deliver a budget at the beginning of May. You are talking about the publication of about 1,000 pages of extraordinary detail. Getting the figures right and making sure everything is absolutely accurate takes a significant amount of time.

We set the parameters for the budget, then we put our budget together within what I have found a very difficult timetable, because we are doing other things, as the Assembly committees are. We then say to the Assembly committees, "This is what it is" and we give you as much time as we can find. I do not disagree that five weeks is a tight timeframe, especially when there are two weeks of sitting in that period.

This happens with almost every single project you undertake. With every single project I have undertaken since I became a minister, I have said, "When are we going to achieve this? What are the timeframes?" I am renowned for asking for a Ghant chart showing how we are going to achieve the goal within time. I look at it and I often say, "I think we can double up here. I think we can tighten our timeframes here and manage in a shorter timeframe." Or I might say, "We need extra time, because we will not be able to achieve this part of the program as quickly as we thought."

We understand your argument about timeframes, but we deliver a budget every year. If you are going to change those timeframes, then the option is to say, "Do you we want to go to two-year budgets?" There could be some arguments for doing that. I would not disagree with them.

Whilst we have some sympathy with the timeframe, we cannot see how we can extend that timeframe and still be able to deliver an appropriate budget. The question then is: is it better to still put it out and seek comment within a fairly tight timeframe, or is it better just to say it is too bad? It seems to me that we are all working within relatively tight timeframes.

Mr Hargreaves mentioned priorities. He said, "All you are asking us to do is prioritise one thing over another." Yes, that is correct. Why are we doing that? Because that is what a budget process is. Ms Tucker, for example, would give a higher priority to some things than I would. Mr Rugendyke would probably give a higher priority to policing

than I would compared to, say, disabilities. I might be wrong. These are always difficult decisions. Any of us can see how important policing and dealing with crime are, and all of us can see how important disabilities are, but we have only a limited amount of money. It is about setting priorities. I imagine it will always be the case that, no matter how much money is available to you, there will always be a need for priorities.

We are saying to you, "This is where we have put our priorities. Have we got it right? Do you as a committee, with the ability to make compromises, think we have got those priorities right, or have we missed something really critical?" Mr Wood spoke about the fact that the Health and Community Care Committee last year put a lot of effort into drawing our attention to a series of issues and problems. I agree. I have acknowledged that. We know that happens. That is why we take recommendations very seriously.

Last year we were not able to deal with all the recommendations at the time, but I think you will find that they have been worked into the budget this time round. We do take committee recommendations seriously. Sometimes we do not respond immediately, but they set our thinking in train. We believe that this is a genuine process. We are trying to be as open as we possibly can. That is what we will continue to do.

MR BERRY (12.06): I have to respond to Mr Moore's sermon. He ought to have finished it off by saying, "Here endeth the lesson" or something like that.

Mr Moore, in a substantial part of his contribution, made the claim that they cannot see how they could improve the process. That is because you have your blinkers on. I will explain how you can do it a little better. I will also explain why it is now apparent that you are unable to conduct an executive-led consultation process yourselves.

If you want to improve the process, you can have an executive-led consultation process, feed it into your budget process, bring your budget back to the Assembly and let it be tested by the scrutiny process here. That is very straightforward and would be much more efficient than the process you have embarked upon.

One reason you are trying to feed it off to the committees is that you want to continue with the drip feeding of pork into the community, continue the so-called promises that have been leaking over the last week or so. You are trying to blur the line and shift the responsibility to the committees for your failure to connect with the community in a reasonable consultation process. That has now become obvious.

We went through this process last year. You could see that the eyes of the people coming before the committees had glazed over. They knew that this was a phoney process. Everybody knows that it is a phoney process. The good thing for the minority in this Assembly is that almost everybody knows that it is a phoney process, and they know that it does not really matter; that it is a political process, that has nothing to do with taking into account the views of the committees. Some people do not waste that much time on describing the process. They just describe it as a monumental wank. That is the general impression you get about this process.

The government is not serious about consultation and is trying to blur the line. There are reasons for it. As I said earlier, if the Chief Minister had been listening, they are incapable of connecting with the community. The community do not trust them. The

reason the community do not trust them is that they have seen all the off-budget efforts of this government, efforts such as the Hall/Kinlyside debacle. That inspired confidence in the community! What use is a budget consultation process to fix that? None. It does not do a thing to fix the Hall/Kinlysides of the world. The budget consultation process does not fix all the dodgy deals that are done off budget. What about the tragic hospital implosion? Bomber Humphries over there—

MR SPEAKER: Relevance, please, Mr Berry.

MR BERRY: That is an off-budget matter as well. How does the budget consultation process fix that? It does not fix it at all. It does not affect it at all. All of the appalling behaviour and appalling management of this government is not fixed by the consultation process. That is why the community know it is a sham and a political stunt.

We have seen the ups and downs of the Floriade fee off budget. How would a genuine consultation process, as described by the government, change those sorts of disasters? It would have no effect at all. What about Bruce Stadium? No story is complete without some discussion of Bruce Stadium.

MR SPEAKER: Mr Berry, relevance, please. The mantra is becoming a little tedious.

MR BERRY: What sort of budget consultation process would fix that? I know, Mr Speaker, that you are embarrassed about the government's performance on this and you do not want to hear it over and over again.

MR SPEAKER: I am concerned about relevance to the debate.

MR BERRY: We have got until October.

MR SPEAKER: I am worried about that.

MR BERRY: All of this is extremely relevant, because it is all about the radical mistakes that have been made by this government and how they are trying to blur the lines in this Assembly to create the impression that somebody other than them is responsible for what comes out in the budget if it is no good. It boils down to the need to propagandise the electorate and the failure of the government to be able to connect with the community in a reasonable consultation process and feed the result into a budget for subsequent scrutiny in this place.

I have said before that a budget put forward in this place for scrutiny is in effect a draft budget. In effect, we have two draft budgets and a consultation process foist on committees, to the point that committees have never been so bogged down in unproductive work as they are by the antics from the government and the majority in this Assembly.

This is a sham process. There is no doubt about that. It is well understood by the community that this is a sham process. This sham process will distract the community's interest from those issues which will drag this government down. This government is now six years old and tired. The same old faces are attached to the same old decisions, no matter what they try to do.

The drip feeding of pork in the last week or so has been picked up by experienced commentators and exposed for what it is. That will continue to be the case while ever the government continues with this process of phoney consultation. Everybody knows that it is phoney. Everybody knows that it is a sham. Everybody knows that it makes no difference to the performance of this government.

The government's performance is hopeless. It brings to mind the contribution to the debate made earlier when the government's triumph was described as "tri" and "umph". I do not think the consultation process has any oomph at all, and neither does the community. If Ms Burke wants to try to convince a few people by ringing them from a public phone, she will need a lot of money before she finds anybody who believes the government is sincere about this. She will be making a lot of phone calls, and it will take her a long time, unless she finds people who have a Liberal Party ticket burning in their pocket. They are the only people who will go along with this. She will not find anybody else.

I go back to Mr Moore's contribution to the debate. He said, "We cannot see ...." Mr Moore, open your eyes. The way is clear. If you are an efficient and competent executive, it is easy to conduct consultation directly with the community. The problem is that you are just not up to it and you have embarked on a propagandising campaign of disinformation in the community about the consultation process. It is a sham.

MS TUCKER: I seek leave to speak.

Leave granted.

MS TUCKER: I wish to clarify the timing. Mr Humphries did insist that it was the 19th, but my recollection was correct. The original letter from Mr Humphries said that the portfolio standing committees will need to report to the Assembly by 21 March. So Mr Humphries has given us two more days.

So people are clear about the timeframe we are talking about, this is Thursday, the 15th. We now have the draft budget. We have the opportunity next week to put out advertisements inviting people in the community to consider the draft budget and put in submissions. We then have two sitting weeks. That is not a lot of time for community organisations to get submissions together, but they would pretty well have to get it done in those two weeks. Then with the week starting 12 March plus now another four days, we would have two weeks to hear the community, have a deliberative committee session and come up with a report. Mr Hird and Mrs Burke will have to be on all those committees. All those committees will have to sit at the same time. In addition, there are all the other commitments that members have in this place. I do not believe it is an appropriate timeframe at all.

Mr Humphries: So why aren't you moving to amend the timeframe?

MS TUCKER: Mr Humphries asks why I do not move to amend the timeframe. The government has said it is impossible. I have said to Mr Humphries—and Mr Moore said it—that I am listening to what he is saying. It is true that the Greens have worked with this proposal. I find this a really difficult situation. We were interested in it. I will not say

that it is not being treated with respect, but it may just not be workable. That is the point I am making, and it seems to be what Mr Moore was saying. We do not have the time to do this properly. If we do not have the time to do it properly, we should not do it. For that reason, I will be voting against Mr Humphries' motion. As I have made quite clear, I do not think it is an adequate timeframe.

I wish to respond to a couple of things Mr Moore said. I know that he is doing the arguing, and he is good at that, but I know that he also knows that it is not true to say that you have to balance priorities within portfolio areas. No government does that. You know that. You are just arguing the point. If you are really interested in balancing priorities, such as police versus disabilities, that crosses two committees. Of course you have to look at the overall expenditure of the territory, which we cannot do in this model that Mr Humphries has come up with.

Revenue always comes up as an important subject of discussion. It was very interesting to me to read the paper today. I have not been able to read it in detail, but the reaction from people I talked to was quite interesting to me. There were not many, I admit, but a couple of members of the general public said, "This is a vote-buying exercise. How interesting."

We are forgoing a lot of revenue. I am looking forward to the government's analysis of how forgoing that revenue balances against how we are performing in the ACT. Mr Humphries claims to be focusing on poverty, intervention and so on. Let us look at the social condition of this territory. We know that there are a lot of problems. We know that there is a lot of unmet need. No-one opposite is denying that. I am interested to see how the government balances forgone revenue against the unmet need and how that works in the long term for the good of the territory.

In the draft budget committee's report we made a recommendation about revenue that is forgone through waivers to the business community and industry. We have asked that that become a transparent process. A lot of revenue is forgone. In the federal arena the accountability mechanisms associated with corporate welfare and the accountability mechanisms imposed on people in the general community receiving welfare are so far apart. The draft budget committee said that it wanted to see much more accountability in how this government forgoes revenue when it is assisting businesses.

I believe it is very important that we have a broader discussion across the portfolio committees if we are going to have this process. But, as I have said, I do not think it looks possible in the timeframe that the government says is possible. For that reason I will not be supporting this motion. But I hope I get support at least for my amendment to bring some credibility into the process.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.21): I will speak to the amendment. I am not sure about the ethics of Ms Tucker moving an amendment to a motion that she does not intend to support. She wants to oppose the motion, but she also wants to amend it. I would have thought that if you move an amendment to a motion and if you get that amendment up, you have an obligation to support the motion. I am far too ethical a person, obviously, to be involved in this place.

I want to comment for a moment on Ms Tucker's amendment to this motion. There is a very important point to make about the amendment she is moving. The government has put forward a proposal for consultation about its budget. It has put on the table, and is still putting on the table, a number of propositions it wants to take forward in the coming budget, inviting public consultation on them. It has not put out as much this year as it put out last year, because Assembly committees claimed that they were overwhelmed by the amount of information; that there was too much; that there were not the resources to do the work and so on.

Mr Quinlan: How considerate!

MR HUMPHRIES: You said that the work was overwhelming and that you did not have the resources.

Mr Quinlan: Out of consideration for us!

MR HUMPHRIES: The government did not put out less information out of consideration for Mr Quinlan's committee. It did it because it wanted to focus on major issues—

Mr Quinlan: You can sling it sometimes.

MR HUMPHRIES: Mr Speaker, I ask for some order. The government has put out this proposal seeking public comment on initiatives. It has put out less than last year in order to allow committees and the Assembly to focus on the nub of the budget, the initiatives of the budget for the most part. We have put forward a motion today in the Assembly because we were told that the standing orders of the Assembly did not permit the process that we had initiated before today to invite the committees, on a voluntary basis, to self-refer the parts of the budget we were giving them to look at. That is why there is a motion before the Assembly today.

Ms Tucker's amendment would make the motion unacceptable to the government. I will explain why in a moment. If the motion is amended as Ms Tucker suggests, and the Assembly then passes the motion as amended, imposing on the government a process for bringing forward its budget with which it does not agree, a very significant threshold will have been crossed. That threshold will be one that says that the government's budget will be consulted about in the way the Assembly dictates rather than the way the government offers.

Mr Berry: Offers?

MR HUMPHRIES: Yes, offers. That is a very significant threshold. Many in this place, including those opposite, the Labor Party, have argued that it is the government's prerogative how it brings forward and deals with its budget. We have moved a motion to overcome a problem with standing orders and to have our budget consulted on as we have asked for it to be consulted on. If Ms Tucker's amendment gets up, it becomes a different motion and we will have established the precedent that the government can have the Assembly tell it how to bring forward its budget.

Look at paragraph (2) of the motion. It provides that the relevant draft budget documents be provided by the Treasurer to the presiding member of each standing committee. In other words, the Assembly is instructing the Treasurer to make the information available. Imagine what would have happened if several years ago there had been a motion before the Assembly instructing the Treasurer of the day, Ms Follett in those days, to provide Assembly standing committees with her budget before it was brought down at the appropriate time. The Labor Party would have gone ballistic. Indeed, they would have been entitled to, in my submission, because it is the government's prerogative to bring down it own budget.

Mr Berry: Why is it in your motion then?

MR HUMPHRIES: Because that is what we want to do, and we are seeking to overcome a problem with standing orders that prevents us from doing that. We were not proposing to move this motion today, except that there was clear advice from the secretariat to the Assembly that we could not have matters referred to committees without a motion of the Assembly to overcome a deficiency in the standing orders. Standing orders, we are informed, do not allow self-reference by Assembly committees on matters which it can be argued do not to fall within the Assembly committees' portfolio of responsibilities.

When, for example, a justice and community safety portfolio initiative package is referred to the Justice and Community Safety Committee, apparently that is more a budget matter than it is a justice and community safety matter. That is the argument that has been put. I do not comment on the validity of the argument. I only indicate that, if there is some doubt about it, it needs to be resolved; hence the motion before the Assembly today.

If the Assembly decides to amend the government's motion to require the government to do something with its budget it does not wish to do, that is not necessarily a precedent that I am entirely uncomfortable with. I think this process must continue. It would be very tempting to force the government which Mr Quinlan said is going to be elected in October, a Labor government, also to consult about its budget. That would be a very interesting precedent.

I am looking forward to the Assembly's reaction to Ms Tucker's amendment, but I make it very clear that once the precedent is established it will be there forever.

Debate interrupted.

Sitting suspended from 12.29 to 2.30 pm

Standing committees
Proposed reference—2001-2002 draft budget

Debate (on motion by **Mr Smyth**) adjourned to a later hour, with precedence over executive business in the ordinary routine of business.

Questions without notice

Broadband services

MR STANHOPE: Is the Chief Minister aware of a review by the Australian Competition and Consumer Commission of Telstra's pricing regime for supply of broadband services via asymmetric digital subscriber line (ADSL) technology? Is the Chief Minister aware that similar services using the same technology are available in the US for a price of around $US30 a month? Is he aware of an industry view that the ACCC review is likely to see significant reductions in Telstra's current $90 a month minimum charge?

MR HUMPHRIES: I thank Mr Stanhope for his question. I have heard about the review. I am vaguely aware of the review taking place but I cannot pretend to have much information to provide to the Assembly about that. But, if the question is whether I am aware of it in that general sense, the answer is yes.

MR STANHOPE: May I ask a supplementary question. Actually, I probably should have continued with my question for the Chief Minister. It would have made more sense. I apologise. My supplementary question is: can the Chief Minister tell the Assembly what impact such a reduction in ADSL service charges might have on TransACT's fledgling broadband business, given that TransACT's pricing structure is based around an installation fee plus content partner costs regime? Given that ACT ratepayers own—through Actew—at least part of the company, can he tell the Assembly how many subscribers TransACT has signed up since it began its phase 1 rollout and what its subscription projections are?

MR HUMPHRIES: It is a reasonably good question but I really do not have the capacity to answer it right now. I will take the question on notice. Obviously, any reduction in the charges of competitors will be of significance to TransACT. TransACT is, in my view, very competitive and I am sure any good enterprise of that kind will have factored in some movements in its competitors' prices, but the extent to which it has been able to factor in what the ACCC has been doing with respect to Telstra I could not say. I will take the question on notice and supply a more comprehensive answer.

Information technology

MR HIRD: My question is also addressed to the Chief Minister. Could the Chief Minister please advise the Assembly of the steps that the government is taking to bridge the digital divide between the people who have access to information technology and the skills to use it and the people who suffer social disadvantage in the community?

MR HUMPHRIES: I think Mr Hird must have been colluding with Mr Stanhope in asking that question about technology, Mr Speaker. I thank Mr Hird for the question. Obviously the issue of the digital divide between those in this community who are capable of being connected and those who are not is a serious issue, and one which I believe all members of this Assembly have acknowledged at some point. Anybody who observes that situation will be concerned at the lack of capacity for people on low incomes, the unemployed, people with disabilities and the elderly to be part of that information revolution. That dichotomy is perhaps more pronounced in a town like Canberra where we have such a high rate of take-up of, for example, Internet access. In

excess of 60 per cent of people across Canberra have Internet access and something in the vicinity of 40 per cent of people in Canberra have Internet access in their own homes. Clearly it is a matter of great concern that there would be so many in the community who, as a minority, do not enjoy that kind of access.

The ACT presently leads Australia in terms of computer ownership. Two in three households in the ACT own a computer. We lead the country in relation to Internet connections, and 62 per cent of adults regularly access the Internet. We are ahead of any other city in Australia. We are ahead of the USA as a whole. We have one of the highest rates of Internet access in the world. Someone told me the other day that in Canberra we have a higher proportion of our population on the Internet than they do in Seattle, the home of Microsoft in the United States. That is a very potent message about how important it is, with a revolution taking place in the way we consume services and interact with others, that we make sure that we are not leaving large parts of our citizenry behind.

It is more important than ever that we ensure that low income earners can access these services. For example, the ANZ Bank, which issues monthly job advertisement statistics, has noted a trend for job advertisements these days to be placed on the Web rather than in newspapers. If you do not have access to the Web, you have a serious problem in accessing some of those jobs. We need to ensure that unemployed people can access the Internet to submit job applications.

Mr Speaker, we have a strong commitment to develop practical strategies to bridge the digital divide. We are a city that is too smart, too switched on, not to be able to develop those sorts of responses. Members will be aware that I recently asked Mrs Burke, the new member of the government team, to chair a task force on the question of the digital divide, and I understand she is about to finalise the selection of that task force and the reference group that she will use.

The task force will report its findings to the ACT government soon so that we can consider the way in which we will commit the $500,000 announced in the draft budget initiatives for application to this problem. It is a problem of that sort of dimension. In fact, the total package that we have announced amounts to $2.6 million over the coming four years, and I hope that that will be money well spent to ensure that we have a community that is truly capable of saying that all its citizens enjoy the fruits of that new technology. It is another important community dividend as a result, I would submit, of good financial management. I hope that we can make sure we drive that money forward to producing a solid result for the ACT community.

Members of the Legislative Assembly—access to information

MR QUINLAN: Mr question is to the Chief Minister. Sometime late yesterday you issued a press release announcing a revenue return of $10 million to the people of the ACT. I have to say that, consistent with your recent media management strategy, it was embargoed until today so the time for any other elected member of this place to prepare a considered response was very limited.

Amongst the propositions for vote buying was a reduction in general rates. As it happens, I am interested in our rating system and I recently sought access to the PALM database. This was refused but I was informed that for the sum of $443.95 plus postage I could purchase information on unimproved values. In the new age spirit of consultation, openness and cooperation, will you as Chief Minister issue a directive that all MLAs should be afforded maximum access to government files, excluding cabinet documents, of course? Will you also issue a directive that MLAs should not be required to pay fees for access or for freedom of information requests?

MR HUMPHRIES: Let me react first of all to that last point. Of course, as far as FOI is concerned, it was this government which substantially wound back the processing charges which were previously applicable to FOI applications and which recently announced that it intends to abolish the application of fees altogether. I suggest that before you ask for a government to provide that kind of relief to members of the Assembly you reflect on the many hundreds of dollars which were collected by your colleagues in the previous Labor government from members on this side of the chamber when they made freedom of information requests.

Mr Quinlan: It is a draft budget though now, mate. We are in the boat with you working on the draft budget, mate.

MR HUMPHRIES: So let me get this straight: you want us to give you free access to things that you did not give us free access to when you were in government? Notwithstanding the breathtaking hypocrisy of that, it has been the policy of the government to maximise the availability of information on the public record to members of this place to aid them in their work. Indeed, as a general rule members of this place do receive information without any cost. If they approach agencies of government which have information on databases that they charge for then not surprisingly it would be the reaction of those agencies to say, "Well, we charge people for this information. If Mr so and so MLA comes through the door we should also charge him."

I do not know about the request that you made for the PALM database. Mr Smyth does not know about it either so I assume it was made directly to PALM rather than through one of our offices. I suggest that if you want that kind of information and you do not want to have to pay the usual charges that apply you should come through our offices because we will likely be able to facilitate that access for you.

Mr Berry: And filter it before we get it.

MR HUMPHRIES: With great respect, the alternative is that you put out a general edict saying, "If a member of the Assembly comes through the door and wants something the government has for sale they do not have to be charged for it." I think that is slightly too broad a proposition. I am quite happy for members to get access to information that they need to do their work but I do not think the general principle that they can go to any government agency and simply demand things for free should necessarily follow.

So I am saying that if Mr Quinlan or others have a request for information for which a charge is usually levied they should come and talk to the relevant minister. I am sure the minister concerned would consider sympathetically the request that is made.

MR QUINLAN: Mr Speaker, I ask a supplementary question. In light of the time restrictions that govern the draft budget scrutiny process, will you provide each standing committee that is examining the draft budget—this is yet to be decided, I think—with a listing of relevant files and budget costings? Will you also instruct that open access to these documents will be automatic and streamlined?

MR HUMPHRIES: "Relevant files"—what files are you referring to, Mr Quinlan?

Mr Stanhope: On every matter detailed in the draft budget.

MR HUMPHRIES: On everything that could touch on the budget?

Mr Stanhope: Every single one. Do you want us to do our job?

MR HUMPHRIES: That sounds like opening the doors of government agencies and saying—

Mr Stanhope: Or you don't want us to know what is going on.

MR SPEAKER: Order, please. You did not ask the question, Mr Stanhope.

MR HUMPHRIES: Mr Stanhope sees the need to shout about this but we will provide information in our usual way to facilitate the work of Assembly committees. Unless there has been a very good reason for doing so, we have not refused access by Assembly committees to information to assist them in their role. We have provided that information in a timely way unless it has been asked for very late in the process, which is sometimes the case. We endeavour to meet the goal that we have set for ourselves.

Mr Speaker, I do not have anything to apologise for on this score. These days members of this place have access to more information at lower cost than was the case when you lot were in government. So there is nothing for us to apologise for on that score.

Public servants and members of the Legislative Assembly

MR KAINE: My Speaker, my question, through you, is to the Chief Minister. Chief Minister, last week you summoned all the ACT senior public servants down to the Convention Centre to tell them about the wonderful new world that you have planned for them and for the Canberra community. I read your speech with some interest because if I closed my eyes I could hear Mrs Carnell talking. It was full of Carnellisms. I was interested that you have not yet developed your own style. You must have the same speechwriter that Mrs Carnell had.

There was one thing in your speech which particularly caught my eye, and that was your observation that, looking back over the years that you have spent in this Assembly, and I quote, "the overwhelming impression that I have today is of a service that is professional, honest, hardworking, collaborative, dedicated and dependable". I think most people in this place would agree with you and had you stopped there you would have been in front.

But, Chief Minister, you then went on, gratuitously, and you said, "qualities that, some suggest, are not always quite so evident among the ranks of our legislators". Mr Speaker, the Chief Minister was suggesting that all or some of the members of this place were unprofessional, dishonest, lazy, non-collaborative, lacking in dedication and undependable.

Chief Minister, I know that you do not hold some of your government members in very high regard, but to which of them were you referring when you described them in those terms?

MR SPEAKER: This is asking for an expression of opinion.

MR HUMPHRIES: Undependable? Who could I have been referring to there, Mr Kaine, I wonder? Mr Speaker, I hate to shatter Mr Kaine's line of thought but I did not use in my speech the words he quoted. The words he quoted were in the printed version of my speech

Mr Kaine: I have a copy of your speech here and the words are there.

MR HUMPHRIES: I am sure you do. You have a copy of the speech that was given to me to deliver.

Mr Kaine: Oh, this is the speech that you didn't publish. I see.

MR HUMPHRIES: Mr Speaker, I have too much regard for my colleagues in this place on both sides of the chamber to use words as disrespectful of them as that. You will find, if you check what I actually said, that I used a far more innocuous phrase, and I will not try to quote it exactly, such as "some people cast aspersions on these qualities in the Assembly", or words to that effect. I was far more careful about what I said in my delivery of that speech than the words provided to me might have suggested.

MR KAINE: That was a very interesting response, Mr Speaker, because it was clearly what the Chief Minister intended to say until he thought better of it. Chief Minister, since at one stage you obviously felt that some members of this place could be described in such terms, and had you used such a description in this place it would be considered highly disorderly by the Speaker under standing order 55, would you care to make it quite clear that you do not believe that any member of this place fits the description that you were going to use in your speech even though you did not have the courage to deliver it?

MR HUMPHRIES: Mr Speaker, I did not use those words, and those words are not attributable to me therefore. If members of this place want to speculate about each others dependability, honesty, capacity to be reliable et cetera, then that is up to them. Mr Speaker, I think members of the Assembly are under enough scrutiny as it is.

Mr Berry: I don't want him to tell me he loves me.

MR HUMPHRIES: I might make an exception in your case, Mr Berry. Mr Speaker, there will be ample opportunity for the members of the ACT community to judge those qualities, and many others, come 20 October when, we are told, a Labor government is

going to be elected. That will be the time for us all to work out just what qualities we have or have not got. My contribution to that, I am sure, will be a very small one in the rank of all those others who are coming down in October.

Excell Corporation

MR HARGREAVES: My question is to the Minister for Urban Services. Is it the case that ACT Waste turned away trucks with waste from Excell Corporation, the successful tenderer for the horticultural maintenance contract for Woden and Weston Creek when your government privatised that service, because of unpaid bills?

MR SMYTH: Mr Speaker, I have no idea. I will have to take that question on notice and get an answer for the member.

MR HARGREAVES: While the minister is doing that, would he like to come back to the Assembly by close of business today—it should not take that long to find that out—and tell us how much Excell does owe the government in unpaid tip fees?

MR SMYTH: I would hope that, as a general principle, anybody who did not pay their bills was turned away. I think it is a reasonable commercial thing, where we charge bills, that people pay their bills. l am not aware of what Mr Hargreaves is talking about. I will get that information for him.

Poverty task force

MRS BURKE: My question is to the Chief Minister, Mr Gary Humphries. Can the Chief Minister advise the Assembly of the government's response to the problems identified by the poverty task force?

MR HUMPHRIES: I thank Mrs Burke for that question. The government is yet to respond formally to the poverty task force. I hope that every member of the Assembly has had a chance to read the report and to consider the ways that the community might be able to address the issues that are raised in it.

It was a very thoughtful report, one which took the time to canvass a large range of community views. I am sure I speak for the members in this place when I say it was a report which did touch on a number of key things and important issues that we need to face up to. The 2001-2002 budget has been designed in part around the need to face up to the issues which the poverty task force report highlighted for the community.

We have announced in that draft budget a series of important initiatives to address the social disadvantages currently faced by some members of the ACT community. There is a popular misconception that the ACT does not have any poverty, or very little, when in fact the task force reported that something like one in 12 Canberrans experience poverty. That figure represents far too many people, 25,000 or so Canberrans, for any government to be content to allow remaining in that state. The poverty inquiry exposed those issues for all of us to deal with.

There are a number of initiatives announced in the proposals put on the table yesterday which touch on both the alleviation of poverty and a very closely related subject, early intervention into a range of social problems. I have mentioned already the money to be spent on the digital divide. There is also $600,000 over four years for community support for residents of multi-unit developments. We are all aware, because we are all MLAs, of problems associated with multi-unit developments in this town, such as social interactions which are very damaging to the rest of the community. We need to address that. This money is targeted at developing ways of making sure that we do face up to those problems. I am very proud about that measure.

We are providing $2 million over four years towards providing public transport concessions for low income households not currently eligible for concessions, people like apprentices, for example, who do not presently have that kind of access but who have quite low wages. The next ACT budget will provide $2 million in funding over four years to reduce waiting times for dentures and dental restorative treatment. That was a key recommendation of the task force on poverty. You can see why it would inhibit the capacity of a person to take part in the affairs of the community and to live their lives fully if they were experiencing pain because of an unsatisfactory dental position.

We also concentrate on early intervention, as I have said, and will provide $21 million over four years to reduce class sizes in the early years of primary school and $6 million over four years to reduce recidivism. We have spoken a lot in this chamber in the last few years about crime, Mr Speaker. Crime is a big issue as far as this community is concerned. I know you want me to hurry up, Mr Hargreaves—

Mr Hargreaves: No, four minutes is the Speaker's ruling.

MR HUMPHRIES: If you going to interrupt me it is going to be longer than four minutes, Mr Hargreaves. Mr Hargreaves has spoken repeatedly in this place about crime and his leader talks about more police to deal with crime. We announced measures yesterday which will deal with crime at its root cause, such as the reasons for people committing criminal offences in the first place, problems with families, problems with mental illness, problems with alcohol and drugs. That is the real onus that falls on this government to act in that respect.

There will be more places for the methadone program, extra money for drug and alcohol initiatives. There will be $1 million over four years for the community visitors scheme to reinforce the quality of disability services in the territory. There will be $1.5 million over four years to strengthen measures to protect vulnerable children from child abuse, neglect and family breakdown, and an increase in a range of services to assist those who are socially disadvantaged in a range of ways.

Mr Speaker, I think this is a good package. The fact that we have put this on the table for the community and for the Assembly committees to examine is the opportunity for people who think we have got this wrong to tell us how and why. I look forward to the contribution made by members in this place to get to the root of these issues and to help us explore ways of making sure that this community operates in a more effective way than at present.

MRS BURKE: I have a supplementary question. On the back of that, can the Chief Minister advise the Assembly of the initial community reactions to the measures that have been announced to help the disadvantaged in recent weeks?

MR HUMPHRIES: Yes, there has been a range of reactions to the initiatives. I do not need to repeat the reactions of those opposite because they have been pretty clear in this place. I note, for example, that the Director of the Council of Social Service, Mr Stubbs, said on WIN News last night, "We are somewhat impressed," which is better than nothing, "with the government's willingness to do a little bit of investing in the ACT community". We will continue to work closely with the Council of Social Service, in particular, in the budget consultation exercise.

The *Canberra Times* summarised the responses of the education sector to reduced class sizes. They said, "Unions, principals and parents have hailed the government's plan to slash class sizes as the most significant event for primary schools since self-government." That is pretty high praise, Mr Speaker.

Mr Haggar, of the Australian Education Union, has described the policy as a significant reinvestment in public schools, and Dr Ian Morgan, the President of the Council of P&C Associations, said that the plan is an excellent one that will undoubtedly make a difference. If you do not mind, Mr Hargreaves, I will continue my remarks.

Mr Speaker, I think there is a need for us to take forward the enthusiasm for those initiatives and change, and I am confident that people will see that in a very positive light, as I hope members opposite eventually will also.

Excell Corporation

MR CORBELL: My question is to the Minister for Urban Services. Does the minister think it is acceptable for Excell to take 90 days or more to pay subcontractors for work which is effectively under a ACT government contract, with some outstanding accounts dating back to October 2000? I can confirm for the minister that a number of subcontractors in exactly that situation have contacted my office. Further, Minister, is it acceptable that ACT government agencies such as Totalcare pay subcontractors within two weeks, yet Excell takes 90 days?

MR SMYTH: The government expects all contractors to honour their agreements. I am not aware what the agreements between Excell and the subcontractors are, but if Excell have agreements in place they should pay on time.

MR CORBELL: I ask a supplementary question. What action will the minister take to ensure that subcontractors are paid in a timely manner in the same way as contractors to ACT government agencies such as Totalcare are paid, and will the minister intercede with Excell on behalf of the subcontractors to resolve this situation?

MR SMYTH: I am very pleased to hear that Totalcare operates in such an effective and efficient manner. I am not aware of what the agreement between Excell and its subcontractors is. If Excell have an agreement, they should honour that agreement. If it is 30 days, subcontractors should be paid at 30 days. If it is 60, they should be paid at 60.

Mr Corbell has mentioned this matter to my office. They are looking into it. But anyone who has an agreement should honour it.

Deakin oval

MS TUCKER: My question is directed to the Minister for Urban Services, Mr Smyth, or perhaps to Mr Humphries if he wants to take it over. It is a follow-up to the question I asked on Tuesday about the redevelopment of the Deakin soccer oval. Unless I missed it, Mr Smyth, I do not think you have replied to my question on Tuesday, which you took on notice.

Mr Smyth: No, I have not.

MS TUCKER: Mr Humphries might like to take this question over, because it has to do with him as well. At the Save Our Open Space Rally held in Civic Square last November Mr Humphries sought to allay community fears that the government wanted to develop open space around Canberra by announcing that the government was only pursuing urban infill on land that was already zoned for residential use under the Territory Plan, with two exceptions—the Yarralumla Brickworks and the old Griffith school. This seems to contradict what you agreed to in the redevelopment of the Deakin soccer oval. As part of the overall redevelopment plan, the soccer club is proposing to redevelop part of its old lease for 24 residential units on land that is currently open space on the edge of the existing oval. This land is zoned for restricted access recreation and is public land.

This part of the redevelopment will require a variation to the Territory Plan to rezone this land as residential. This proposal is quite clearly contrary to Mr Humphries' statement at the rally, so will you now withdraw from your agreement with the Croatia Deakin Football Club to facilitate the development of these units on the oval site, or does it mean that your statement at that rally should be regarded as a non-core promise?

MR HUMPHRIES: I will take that question. Before I made that statement to the rally in October or November, I asked for advice from Planning and Land Management and from Asset Management within what is now Mr Smyth's area of responsibility about those areas of the territory for which development proposals had been considered and which were designated urban open space. My advice then was that there were two significant areas covered by that description. They were the brickworks site at Yarralumla and the site of the old primary school in Griffith. My advice was that there was no urban open space affected by the proposal at Deakin. On that basis, I made that commitment to the ACT community.

MS TUCKER: So we have contradictory advice. My supplementary question is: could you also explain why the government gave the football club $220,000 as compensation when the club gave up its lease for that part of its block that will become a public park, when the club had publicly admitted that the improvements on this part of the block were in poor condition and not wanted by the club and would be demolished anyway as part of the development of the public park and when the whole block had been transferred from the ACT Soccer Federation to the Croatia Deakin Football Club in 1998 for only $133,000?

MR HUMPHRIES: There is a very simple reason why the government agreed to make that payment: it is the law. There is a requirement in the legislation that when a lease is surrendered the improved value of the lease is to be repaid to the surrendering lessee. That is the value that was determined for that site. Therefore, the money in question was paid—for no other reason.

Supported accommodation assistance program

MR WOOD: My question is to Mr Moore as the fairly new minister for children, youth and family services. Minister, the government is full of promises, but delivery is not so good, although my criticism is more of the former minister responsible for those services. After years of denial, late last year Mr Stefaniak provided advice that an additional $1.5 million would be available from 1 January this year to assist those in the SAAP program, the supported accommodation assistance program, to meet the SACS award. I recall too that Mr Moore was a bit less mean than Mr Stefaniak some years ago when that award caused problems. Mr Stefaniak promised $1.5 million from 1 January, but as yet I am not aware of any of this desperately needed money being delivered. SAAP, as I understand it, is in your portfolio, Mr Moore. Are you able to advise now or perhaps later how and when this money will be distributed, because time is getting away.

MR MOORE: Thank you for that question, Mr Wood. The money will be distributed in the same way as we have done it with regard to health in the past. The money is there for people who need it. In the health portfolio we set aside money to do that, but in purchasing services from community groups we went through with them what they needed to deliver their services in the most efficient way and to meet the requirements of SAAP. Sometimes, not every time, that required an injection of money. Sometimes they were able to provide the services in a more efficient way and therefore meet the requirements of SAAP from the money they already had. It was quite clear to us that we would not be able to get efficiencies in every service operating. Therefore, it was important to have a pool of money from which we could inject funds. I intend to operate the same system for SAAP services within the community services area.

I think we should see this as an opportunity to make sure we can deliver the most efficient and most effective service. Why am I interested in efficiency? The reason is that, if we can deliver services at a lower cost to government, that allows us to use the funds thus saved to purchase even more services for the people. Our first and foremost focus is on the people we are trying to make sure get the services rather than on the organisations that deliver the services. That does not mean that we ignore those organisations. Of course we do not. We want to work with them, and we will continue to work with them. But there is a priority issue. The people who get the services are our main focus, and that is why we will be using that methodology.

MR WOOD: I ask a supplementary question. Minister, your answer worries me. I think you have taken us backwards. I accept that you have probably given us a general answer about the way you normally handle things. The very clear impression from the questions posed to Mr Stefaniak was that this money was there and was ready to be delivered to those needs that had been identified, and it was about to be delivered. It was not that we needed any further review or consideration. I think if you inquire you will find it is slow getting out to where it has pretty well been committed. If you could go back and have a further look at that and take us forward, we would all be very grateful.

MR MOORE: I will take that question on notice, Mr Wood, and I will investigate to what extent that is the case. At one of my early meetings with the department after I took on this responsibility, I explained that this would be the methodology for dealing with SAAP. I am keen to make sure that we do not delay money getting into the community. I think that is the nub of what you are saying. The methodology I have used within health has been a very positive way of delivery. That is the methodology I intend to use. However, if a promise has been made to somebody by Mr Stefaniak, of course I will respect that.

Neighbourhood watch

MR BERRY: My question is to the minister for police. I understand that the Tattersalls sponsorship of neighbourhood watch has been halved this year and that the association is seeking $15,000 from the ACT government to make up the shortfall. Does the minister agree that neighbourhood watch plays a role in crime prevention in the ACT? Can he explain why there is no mention in the document that revealed the Chief Minister's bits and pieces of draft budget initiatives of any move to redress the neighbourhood watch sponsorship shortfall?

MR SMYTH: I think that everyone in this place understands that neighbourhood watch plays a role in building up a stronger community, a safer community, and that safe communities are those that do work together, so sponsorship of a group such as neighbourhood watch is of concern. It is unfortunate that Tattersalls have sought to reduce their funding of it.

In regard to Mr Berry's question, he will not find it in there because grant funding is not announced in the initiatives of a budget.

MR BERRY: I have a supplementary question. Is it not true that the government's attitude to neighbourhood watch in its current predicament is that neighbourhood watch can sink or swim?

Mr Smyth: No.

MR BERRY: It has left them to their own devices. It has just abandoned them.

MR SPEAKER: That is an expression of opinion. The supplementary question is out of order.

Motor vehicle registrations

MR RUGENDYKE: My question is to Mr Smyth as the minister responsible for Urban Services and the police, which is convenient. Minister, recently I wrote to you seeking information on a bizarre proposal to revamp the motor vehicle registration process in the ACT and it was confirmed in your reply that from 1 March registration labels will be sent out with registration reminder notices prior to the registration being paid. You also confirmed in your response that there was some risk involved in that people may attach a label to their vehicle without payment.

Mr Smyth, why is the government taking this risk, particularly as people who drive around with unpaid registration labels would not be covered by compulsory third party insurance should they be involved in an accident. How do you expect police to be able to police this system?

MR SMYTH: Mr Speaker, you have to start from the premise that most people are honest, and most Canberrans are honest and do the right thing. There are those who, whether they get a sticker or not in their registration renewal notice, will not renew their registration. That, of course, will need enforcement and Urban Services will make sure that the AFP is aware of the changes and work out strategies for enforcement. But whether they get a sticker or not, those who choose not pay the registration choose not to pay the registration. If they break the law in that way, their cars will not be registered and they will not be insured.

MR RUGENDYKE: I have a supplementary question. As members are aware, vehicles can be registered for three, six or 12-month periods. Is it the minister's intention to send out stickers for the three periods of registration or will someone who wants registration for a different period have to come back and exchange a sticker?

MR SMYTH: Mr Speaker, this system is not new for Australia; New South Wales and Victoria do the same. They post out something like eight million labels a yet in advance of payment. This is not leading-edge thought on how to make systems more efficient. The question presupposes that people will accept the label and say, "I am registered; I will put it on my car." I do not think Canberrans are like that and I do not think that they are that dumb that they will attempt to do that.

In attempting to make sure that all systems are as efficient as we can make them, we often look at what happens in other jurisdictions. Both New South Wales and Victoria already have this system and it is a system that is seen to work. In New South Wales about 2 per cent of the labels are not being validated is.

We have troubles now with people who do not register their vehicles and we have enforcement. Urban Services and the police will work together to make sure that enforcement is effective; but, at the same time, we should not be afraid to use new ways of doing things. Just because we have done something one way for 10, 20 or 30 years does not mean that we should not be attempting to find ways to make the system more effective.

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

TransACT

MR HUMPHRIES: Mr Speaker, yesterday I took a question on notice from Mr Osborne about TransACT. He wanted to know who the shareholders of TransACT were. My advice is: ACTEW 26.8 per cent, TVG 32.4 per cent, AGL 20 per cent, Marconi 15.2 per cent, ACV 4.8 per cent and the staff of TransACT have a 0.8 per cent shareholding in the enterprise.

Those companies have for most part made an investment of capital into the enterprise, presumably in proportion to those shareholdings, except that Actew's contribution is less than would be suggested by their shareholding because they have made an investment in kind through making available their wires and so forth and also through the investment of the intellectual property and the research already done on the project through such things as the Aranda rollout from the first stage of this proposal.

Mr Osborne also asked me about whether the TransACT fibre-optic technology was the most contemporary leading edge technology to use in this setting. My advice is that it certainly is. The alternative apparently is WAP technology, which is okay for use inside buildings, offices and smaller areas but it gets into problems when large buildings and trees and so on get in the way. Of course, in the bush capital that is quite likely to happen.

TransACT engineers investigated using WAP in fact before the network was built but discovered there are too many inherent problems at present. High-tech companies in the US and Europe have found the same thing and are also building networks using fibre-optic technology. WAP technology can be connected to the broadband network. It works very well in some cases but it can also be very expensive. WAP technology is able to be connected to the TransACT network.

Fibre-optic networks like the one TransACT is building and WAP technology do complement each other and can be used together but WAP is not an effective way to connect a whole city and definitely not a whole region, state or country.

Mr Speaker, I am advised that NextGen has just raised $800 million to lay fibre-optic cable connecting the major capitals in Australia, including Canberra, from Perth to Brisbane. Companies like Leightons, which is one of the major backers of that enterprise, and Lucent Technologies, which is one of the world's largest high-tech companies—in fact, the largest research and development institution in the world—and which is providing much of TransACT's technology, would certainly not have invested that very large figure in superseded technology. Incidentally, WAP technology is wireless access protocol.

Deakin oval

MR HUMPHRIES: Ms Tucker also asked me during question time about urban open space at Deakin. I can confirm that there is some urban open space close to the Croatian Deakin Soccer Club at Deakin. It is urban open space covering the Deakin anticline. That area will not be compromised in the development which has been proposed by the club. In fact, it is going to be enlarged in that proposal. The area that is being proposed to be varied is in fact restricted access recreation and it is not subject—

Ms Tucker: And public. Yes, I said that.

MR HUMPHRIES: Well, that is not classified under the Territory Plan as urban open space.

Ms Tucker: I know what you are saying. People think it is public land.

MR HUMPHRIES: That was my promise to the public meeting Ms Tucker refers to. Given that the restricted access recreation area is being replaced by other restricted access area in this development, I think it is quite appropriate to exchange it in that way and I support the development which is being proposed there for that reason.

Surveyors declaration forms

MR SMYTH: Mr Speaker, I have additional information for Mr Rugendyke in relation to his question on 13 February regarding surveyors forms. The approved development application and the lease for the sites specifically recognise balconies attached to the buildings that encroach over unleased land. The form was amended to give effect to the territory's requirement advised on approval of the development some time ago and to ensure that no impression could be given that the land outside the parcel was being subdivided in the unit titling process. Such a subdivision would not be possible since you cannot purport to divide title over land that you do not own.

In cases where the building itself rather than the fixtures and fittings encroaches outside the parcel, the applicant is required to apply for additional land to be included in the lease and thus eliminate the encroachment. Such applications for unit titling are capable of being approved and signed once the additional land issue is resolved. This situation did not apply in relation to the Globe building and therefore there was no delay in the officers signing the form.

AC/DC Concert

MR SMYTH: Mr Berry also asked questions about the AC/DC rock concert. In the first part of his question he asked why water was not permitted to be brought into the concert. The concert promoter directed that nothing be brought into EPIC in the form of plastic or metal containers as they could be used as projectiles and therefore created a safety issue. Free water was made available at the front of the stage and at the first aid station and was also retailed at the food and beverage areas where it was provided in cups—

Mr Corbell: It was sold in plastic bottles.

MR SMYTH: Well, the advice here is that it was provided in cups.

Mr Corbell: Well, we understand it was sold in plastic bottles.

MR SMYTH: The advice here is that it was provided in cups—you jumped too early, Mr Corbell. EPIC ensured that there was a constant supply of water at the event.

The second part of the question related to what risk assessment was carried out in relation to the AC/DC concert and what precautions are taken by government to ensure adequate safety at the events. Mr Speaker, through the Regulators Forum, which is chaired by the Occupational Health and Safety Commissioner and the Emergency Services Committee chaired by the Police Commissioner, strategies have been put in place to apply risk management and risk management process for large public events management.

A range of regulators can be involved in such an event and events can differ widely in type and location. This usually is coordinated through meetings organised with the promoter, be it a government initiative or a commercial initiative. The events are also subject to a range of inspections by various regulators.

The promoter was aware of the problems encountered at the Big Day Out concert in Sydney, which was held one week prior to Canberra's AC/DC concert and appropriate measures were therefore in place at the concert on 3 February at EPIC. The promoters provided a risk assessment to EPIC and WorkCover for the temporary structures, the stage and the sound and the lighting, and relevant inspections were conducted. There were no known incidents as a result of the AC/DC concert.

You also asked about difficulty with the exit routes. With regard to the exits, there were two exits constructed to allow exit for patrons from the secure area set up for the concert. These exits were considered adequate for the departure of the crowd. There are no recorded incidents as a result of the exit procedures at the AC/DC concert.

Excell Corporation

MR SMYTH: Mr Corbell and Mr Hargreaves asked questions about Excell. Excell had been barred, along with any other organisation who owed payments. Excell's overdue debt was about $1,400. Excell have committed to pay this and therefore they will be allowed to use the tip. In regard to the subcontractors, Excell have advised that they are in the process of paying all outstanding amounts to their subcontractors.

Deakin oval

MR SMYTH: Mr Speaker, I have some more information for Ms Tucker on the Croatia Deakin Soccer Club. There was consultation throughout the first six months of last year. This culminated on 1 June last year when Mr Humphries wrote to both LAPAC and the opposition to advise the government's support of the application. The deeds were actually exchanged on 15 September last year. The documentation was tabled in December 2000 and that documentation was the culmination of the meetings, the consultations and all the discussions.

Papers

Mr Speaker presented the following paper:

> Legislative Assembly (Broadcasting of Proceedings) Act—
> Authority to broadcast proceedings, pursuant to subsection 4(3)—Revocations and authorisations (2), dated 13 February 2001, given to specified government offices to receive sound broadcasts of Legislative Assembly and committee proceedings, subject to the certain conditions.

Heritage Places Register—Albert Hall
Paper and statement by minister

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services): Mr Speaker, for the information of members, I present the following paper:

> Land (Planning and Environment) Act, pursuant to section 29—Variation (No 159) to the Territory Plan relating to the Heritage Places Register—Albert Hall Yarralumla, together with background papers, a copy of the summaries and reports, and a copy of any direction or report required.

Mr Speaker, I seek leave to make a statement.

Leave granted.

MR SMYTH: In accordance with the provisions of the act, this variation is presented with the background papers, a copy of the summaries and report, and a copy of any directions or reports required.

Papers

Mr Stefaniak presented the following paper:

> National Crime Authority—Report for 1999-2000, including financial statements and the report of the Australian National Audit Office.

Public hospitals

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, on Tuesday I understand that you tabled the performance report for the December quarter 2000-2001 for the Department of Health, Housing and Community Care. On page 2 of that report under the heading "Summary of Major Outputs, Output 3.1: Clinical Services" it is stated that ACT public hospitals have produced 28,850 cost-weighted separations, which is a 1 per cent under achievement against the pro-rata budget. This figure actually understates the position as it was calculated on only 98 per cent of the total data. So, for the information of members I will be tabling during the next sitting session a report with an updated figure.

Papers

Mr Moore presented the following papers:

> Health Regulation (Maternal Health Information) Act—Quarterly report from approved facilities—1 July to 30 September 2000.
> Information bulletins—
> Calvary Public Hospital—Patient Activity Data—December 2000.
> The Canberra Hospital—Patient Activity Data—December 2000.

Canberra Hospital implosion—inquiry
Discussion of matter of public importance

MR SPEAKER: I have received a letter from Mr Kaine proposing that the following matter of public importance be submitted to the Assembly for discussion:

> The need for the Government to reconvene immediately the inquiry under the Inquiries Act into the failed Canberra Hospital implosion.

MR KAINE (3.26): Mr Speaker, I do not regularly propose matters of public importance in this place because, without in any way seeking to denigrate the efforts of other members, it is my strong belief that debate on MPIs should be reserved for matters that truly are of the utmost importance and not just passing whims of the moment. But I submit that the issue at hand today is just such a matter of utmost importance in the minds of the public.

Even if I had the time available, it is not necessary for me to describe once again the terrible events of Sunday 13 July 1997. However, it is a matter of dismay to me, and I imagine to very many other Canberrans, that when people elsewhere in Australia and perhaps even around the world think about our city, what immediately comes to mind are those television images of the bungled implosion which could have been funny had they not been so tragic.

Mr Speaker, on 4 November 1999, nearly a year after the completion of months of hearings before him, coroner Madden presented his findings and recommendations arising out of the inquest into the death of Katie Bender in the bungled Canberra Hospital implosion. Following this, two individuals were committed to stand trial on very serious criminal charges. As we now know, a week ago the Director of Public Prosecutions, in his wisdom, decided to drop the last of these serious criminal charges and to proceed only with offences under the OH&S act. It is noteworthy that no reasons have been given publicly for this decision. We do not know why the DPP has decided not to proceed, and we may never know because the response from the DPP was effectively: "No correspondence will be entered into."

What this means, Mr Speaker, is that two of the individuals most closely connected with the implosion—that is, the contractor who set the explosives and another contractor who supervised the demolitions man—both of whom were excused from giving evidence during the inquest, have never been given the opportunity to tell their side of the story, under oath, about what occurred on that fateful day.

Almost unbelievably, the net result of two years of this activity is that while incompetence, mismanagement and ignorance at high levels and low were clearly demonstrated, no-one has been identified as having any responsibility for the tragic outcome. Mr Speaker, I do not think we can leave it at that. Indeed, people who have suffered enormous trauma are not even entitled to compensation under the victims of crime legislation. The government ensured this when it amended the legislation at the end of 1999 to specifically exclude them. So there are many uncertainties in the minds of many people about the present position and the fact that no-one seems to be responsible for the terrible impacts on their lives that this event has precipitated.

Members will recall that at the time of the tragedy the government considered it imperative that an inquiry separate from the coroner's inquest should be conducted. Major General Smethurst was appointed to carry out this separate inquiry. In the search for the truth, no stone was to be left unturned. With the blowtorch on their belly, money was to be no object for the government. And initially, at least, the government saw no impediment to the two investigatory processes being conducted simultaneously.

Regrettably, however, the inquiry, which might have resolved issues now still outstanding, went into recess when the Chief Coroner identified some possible difficulties which might arise from conducting two parallel inquiries.

Mr Speaker, twice this week I have raised with the Chief Minister the question of reactivating the Smethurst inquiry to deal with matters of serious public concern arising from the bungled hospital implosion that will not now, apparently, be addressed following the abandonment of criminal proceeding arising out of the coroner's inquest.

The Chief Minister's response was both predictable and negative. Firstly, he claimed, we do not have the money. Secondly, we got a typically flippant response from the Chief Minister—something about whether Elvis Presley was dead or not. But the money argument will not wash. There was plenty of money available in 1997 when the blowtorch was on the belly and that money has not been spent because the inquiry was terminated. But that, of course, was when the government was squirming in the glare of intensely negative publicity. So presumably the money that the government originally allocated is still available and can be used.

But disregarding that, we have seen during the last 24 hours that the government apparently has many millions of dollars available to be sprinkled around where they think some electoral advantage might be gleaned in an election year. I notice that the government has no difficulty in finding money for initiatives seen to be electorally attractive—for example undefined "innovations"; "social capital", which still has not been defined; and so-called "compacts" with the community. There is no shortage of money for what the government wants to do.

The other argument from the Chief Minister, his flippant response, is both insensitive and unacceptable. To compare the personal ramifications of the implosion for the Bender family with those who might have or had some distant attachment to Elvis Presley is, quite frankly, appalling. Indeed, his facetious remarks, while unfortunately typical of his lack of judgement, are quite distasteful.

Mr Speaker, there is clear justification for further examination of the unresolved issues flowing from the tragic events of that Sunday afternoon in July 1997. The issues of criminal liability were dealt with by the coroner but have now been disposed of, albeit unsatisfactorily for many Canberrans. But the administrative and managerial shortcomings that contributed to this tragedy have not been dealt with. Widespread ignorance, incompetence and mismanagement led to a tragic death and to major trauma for many people. Yet all of those individuals involved who exhibited and practised ignorance, incompetence and lack of management skills, seem to stand to escape unscathed after all of this.

The community that we in this Assembly represent rightly expects that responsibility be laid at the feet of the incompetent, the ignorant and the failed managers. A real disquiet will remain in the community until that is done. The money to allow this to happen can easily be found by a government committed to resolving those issues once and for all—issues that loom large in the minds of some and perhaps many of our fellow citizens. In the absence of such a resolution, I suspect these issues will continue to loom large at the election come October.

Mr Speaker, the Chief Minister must reactivate the Smethurst inquiry. The facts of the case demand it but equally as important, or perhaps more so, natural justice demands it. In this respect, one might usefully quote the *Canberra Times*, which earlier this week editorialised about the unresolved issues surrounding the implosion tragedy. The *Canberra Times* said:

> The public also are victims of what occurred and cannot be satisfied only by damages being paid to direct victims, any more than had a person been singled out for criminal punishment. The public will be satisfied only by proper assurance that systems are now in place that would prevent any recurrence, and by the certainty that all who have been involved in the mismanagement, even if not criminally liable, have been properly called to account. In that sense, no-one can yet be satisfied that full justice has been done.

That is what was said by the *Canberra Times* and they are words with which I totally agree.

Chief Minister, it is your responsibility to ensure that the victims of the hospital implosion—and there are many—are satisfied that justice has been done. Unless you can identify and apply some other means by which that necessary objective can be achieved, then I believe you are obligated to reconvene the implosion inquiry and see it to a proper conclusion.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (3.35): Mr Speaker, I want to start by correcting a couple of misapprehensions—I will put it that way—that Mr Kaine has put on the record in this debate. First of all, let me refer to a correction of the record from yesterday. During question time yesterday, Mr Kaine asked:

> … Chief Minister, in answer to my question about the Smethurst inquiry—

that was a question asked on Tuesday, the previous day—

> you said, and I quote, "the inquiry is technically dormant rather than non-existent".

Mr Speaker, I have gone back to the *Hansard* for that day and I want to read the sentence that Mr Kaine relied on in putting his remarks on the record. My sentence read as follows:

> My view is that, if technically the Smethurst inquiry is dormant rather than non-existent, it should not in fact be revived or renewed at this stage.

So I did not at any stage say that it was dormant or non-existent. I simply responded to his question that suggested that it might have been by saying that if that was the case then I thought there would be certain things flowing from that. I would like to correct the record on that score, Mr Speaker.

Mr Speaker, I also want to correct a couple of other things that Mr Kaine said. He said that no-one has been identified as being responsible for the death of Katie Bender. My response to this illustrates how difficult it is to conduct a debate of this kind while matters are still proceeding before the ACT courts. There are proceedings against two people in our courts at this time relating to the implosion at the Royal Canberra Hospital and the death of Katie Bender. If one or both of the two people who are involved in proceedings in the court in fact suffer a penalty on the basis of some misfeasance on one or both of their parts, then that may be interpreted—and I say this with great care because the matter is still before the court—as a statement of responsibility with respect to the death of that girl. So it is quite improper and quite wrong to suggest that no-one has been identified as responsible.

In fact, the coroner conducted a comprehensive inquest into this matter. It was one of the longest ever undertaken in the ACT, and one of the most comprehensive. At the end of that process he handed down a report. I want to quote one part of that report:

> It is out of extreme caution that a wide ranging inquiry was undertaken to ensure that no issue was missed and therefore it seems to me on review that there is no necessity now to reconvene the Smethurst Inquiry or any other inquiry.

That was the view of the coroner, Mr Madden. It is clear from the proceedings the coroner undertook that he did form a view about blame. He made recommendations appropriate to that view and the recommendations in turn led to charges being laid against two individuals. Those charges have been discontinued by the Director of Public Prosecutions on grounds which are strictly matters of interpretation of the law and the assessment by the Director of Public Prosecutions of the likelihood of the charges being successful in our courts.

So it is also wrong to say, as Mr Kaine said, that those who exhibited lack of competence appear to stand unscathed. The proceedings are still afoot. They are not manslaughter proceedings but they are still proceedings that deal with the question of blame. I have to say that while those proceedings are on foot a debate in here has the very great danger of prejudicing that inquiry, particularly if it is reported. I see nobody in the press gallery at the moment, but as we know people are in other parts of this building listening to these proceedings. I simply say to members: be extremely cautious about what you say on this matter because there are people whose position stands to be prejudiced by what we say here.

Mr Speaker, I do not want to say anything else on this matter except this: Mr Kaine asked a question today about honesty and integrity in this place. I think it is most unfortunate that there are still people in this community who are seeking to exploit the death of that young girl for political reasons.

MR STANHOPE (Leader of the Opposition) (3.41): Mr Speaker, before addressing the substance of this matter of public importance, I acknowledge the issue that the Chief Minister has just been addressing—the fact that there are ongoing legal actions or matters arising out of and in the aftermath of the implosion of the hospital. Of course, we all acknowledge and understand implicitly the importance of ensuring absolutely that nothing we do or say in this place affects the administration of justice. That is a given. We are all conscious of it and we are all respectful of the importance of that.

That does not prevent us from debating, or impinge on our capacity to debate, this issue or this matter of public importance, just as it did not affect the *Canberra Times'* capacity to editorialise last week on this very same subject. The *Canberra Times* had no difficult in editorialising, the *Canberra Times* had no difficulty raising and discussing this very same issue, and nor do we in this place have any difficulty as long as we, of course, respect and understand the importance of not impacting on or affecting any legal matter that may be current.

On the issue of the matter of public importance, we have each noted that under questioning from Mr Kaine over the past two days the Chief Minister has relied on two arguments to resist the calls that Mr Kaine has made to reconvene the Smethurst inquiry—cost and the comprehensive nature of the coroner's report. The Chief Minister referred again to these matters today.

Mr Kaine dealt with the cost argument. I think it can be restated quite simply that this community has already invested over $2 million in the inquiry—in fact, it is probably $3 million if one takes into account the cost of the coronial inquiry itself. But just in legal expenses, I understand we are up to $2¼ million. If one takes into account each of the legal counsel engaged, the Totalcare costs and the legal aid paid, I think that bill is $2¼ million. Over and above that we have the coroner's costs and all of the on-costs. So we are probably looking at $3 million.

Can we afford to spend any more money on this? I think the crux of the point that Mr Kaine makes about the cost is that we have probably spent $3 million to date inquiring into this issue but the report is not complete, the matter is not settled and there are significant gaps. So we are faced with the equation: having spent $3 million but the matter not being concluded, is it appropriate to suggest that we spend another couple of hundred thousand dollars to at least ensure that the job is done, and done fully and completely? I think absolutely yes.

There is an additional cost. It is a cost which we should bear to see that the job is concluded appropriately. Having expended $3 million and done 90 per cent of the work, it behoves us to be prepared to expend an additional 10 per cent of the overall cost to have the job done properly. So the cost is acceptable. There is a legitimate additional cost which we should be prepared to bear in relation to the furtherance of this inquiry.

And as regards the view that the coroner's report dealt with all the issues comprehensively—this is the point on which the Chief Minister principally hangs his hat—it is true that Mr Madden made specific reference in his report to the Smethurst inquiry, and the Chief Minister has just made some reference to that in his remarks.

Mr Madden also said, in addition to the comments just quoted by the Chief Minister:

> Needless to say having embarked on such a wide ranging inquiry out of extreme caution to ensure no issue was overlooked there is now no need in my view to again convene the Smethurst Inquiry. It would be simply a duplication of the process…

But this was, of course, not a formal recommendation by the coroner, merely an expression of opinion, but presumably it is the basis that led Major General Smethurst to hand back his commission, as the Chief Minister told us occurred late in 1999. We cannot be sure when he handed it back because we have not seen any report of the inquiry, despite the point that Mr Kaine made yesterday about the provisions of sections 14 and 14A of the Inquiries Act.

I think it would be appropriate if there were some report from Major General Smethurst about the basis on which he handed back his commission. I recall quite clearly that he collected a significant number of documents in the period before the coronial inquest was established. He did do work at the outset but until yesterday we did not know, in fact, that his inquiry had been terminated. It was not until yesterday that we discovered that. The termination was allowed to occur in secret. There was no announcement in 1999 and there has not been one since. There has been no announcement of the termination of the inquiry at all, and this remains and continues to be a mystery. I am not sure that we will ever get a plausible explanation as to why, and the circumstances in which, that particular inquiry was terminated.

At the same time, acknowledging what Mr Madden said, there is, in retrospect, a gap in Mr Madden's reasoning—one that he could not have foreseen at the time he made his comments. Mr Madden expressed his opinion in the same report that he recommended that serious criminal charges be laid against certain people in relation to the implosion. It is inconceivable that he would have had any expectation that those charges would never be heard, for whatever reason. I think it would have been inconceivable to the coroner when he made that recommendation that the charges would not be heard.

In the expectation that those charges would be laid and heard, Mr Madden was entitled to his view that his own inquiry had ranged broadly over the same ground proposed to be covered by Major General Smethurst. Mr Madden was entitled to that view, even though he had quite properly excused from giving evidence during his inquiry two of those most closely connected with the implosion, the same people he recommended should be charged.

The coroner could quite rightly have expected the legal proceedings he recommended would see their versions of the events of the implosion put and tested in court. It is undoubtedly that expectation that led Mr Madden to express his view that there was no need for a further inquiry or for the Smethurst inquiry to reconvene. That is only logical.

Mr Madden had an expectation that there would be a further review of the matters. Mr Madden had an expectation that those whom he recommended be charged would make their defence in a court, that the matters that they had not revealed to him would subsequently be revealed during their trials.

But now, as we know, Mr Madden's expectation cannot be met, and despite the broad ranging nature of his coronial inquiry, there are major and quite glaring gaps in the story. As long as there are quite evident gaps in the story, Mr Humphries is wrong in his assertion that the matter has been resolved. There can be no resolution, no closure, until the full story is told.

To date legal processes have made that impossible. Mr Madden was quite right to excuse Mr McCracken and Mr Fenwick from giving evidence to the inquest. The fact that Major General Smethurst has surrendered his commission has, it would seem, removed any immediate avenue that would allow the story to unfold.

This event—the implosion, Katie Bender's death and the very real threat to thousands to others—has scarred the Canberra community. The community wants answers to its concerns about the implosion and it wants assurance that it will not be subject to a similar blunder again. Three and a half years after the implosion the community has not been given this.

I note that the Chief Minister does not hesitate to raise Katie Bender's death and the Bender family's grief in relation to his attempt to actually smear and malign those of us who actually do want this matter brought to a conclusion. He uses them in his condemnation of us.

As recently as last week, the counsel for the Bender family very publicly expressed the view that the Bender family are not satisfied with the fact that the inquiry has not been as full and fulsome as it may be. I resent very much the aspersion that the Chief Minister has just cast in relation to the Bender family because the fact is that the Bender family are perhaps the most dissatisfied of the people of Canberra about the process that we understand has now been completed. They are the people in Canberra most dissatisfied that this matter has not been appropriately concluded. So do not let us have the situation of the Bender family being thrown in the faces of those of us who are seeking to see this matter brought to some finality. We know what the Bender family think and we know what they want. They want proper and appropriate closure of this issue.

The political, governmental and administrative process that gave us the implosion needs to be fully examined. That examination is needed so that the community knows what happened and for what reasons. More importantly, we need to know what happened so that it will not happen again. We need to know precisely what went wrong, we need to know all the details of what went wrong, so that it will never ever happen again. That is why we need to know. This has to be prevented. This appalling accident, this appalling blunder, must never again occur and if we do not fully investigate we cannot give that assurance.

The inquiry does not have to duplicate the coronial inquiry. The inquiry itself can determine the extent to which the coroner has covered the field and decide on the areas it should examine. The inquiry could start by taking evidence from people such as those who did not give evidence on the basis that they were concerned they may incriminate themselves and from people such as Mr Kaine, a minister at the time, who sought to give evidence at the coronial inquiry and was denied the opportunity. There are gaps that should be filled.

MR STEFANIAK (Minister for Education and Attorney-General) (3.52): Mr Speaker, I believe that a short examination of the relevant facts, especially relating to the inquiries that have already been undertaken, will demonstrate that there are not grounds to reconvene any inquiries under the Inquiries Act, as suggested by Mr Kaine. Indeed, I think it would be helpful to commence by reminding the Assembly of the actual extensive level of investigation and the other follow-up action that has been undertaken by various independent inquiries and the government respectively on this matter.

It is highly relevant to take note of both the comments of the coroner into the hospital implosion—I think we have heard some mention of that already—and those of Major General Smethurst in November 1999 when the coroner made public his findings. Of course, Major General Smethurst was appointed under the Inquiries Act to undertake a separate inquiry into the matter.

The coroner's inquiry commenced in August of 1997 and was only completed following a very thorough and wide-ranging investigation on 4 November 1999 when he made public his findings—some 2¼ years later. The hearings started in March of 1998 and finished in November 1998. There were 118 sitting days and some 9,900 pages of transcript. His decision was handed down in November 1999 in a 650 page report of his findings, comments and recommendations. In all, some 47 witnesses, including the former Chief Minister, gave oral evidence and some 600 exhibits were tendered. Some 18 separate interests were granted leave to appear. At most times there were at least six counsels appearing and they were allowed to cross-examine all witnesses in the actual proceedings.

That investigation included not only persons immediately involved in the failed implosion but a large number of other persons less directly involved, including agency staff, politicians like the former Chief Minister and political advisers, whom the coroner considered should relevantly be included within the inquiry.

The Smethurst inquiry was established on 29 July 1997 but, on the advice of the coroner who considered that this inquiry had the potential to adversely impact on the coronial inquest and in particular any later recommendations relating to criminal proceedings, agreed to go into recess on 27 August 1997. I was well aware of that. Mr Kaine was in cabinet at the time as Urban Services Minister and Mr Stanhope, of course, was not in the Assembly then.

The Smethurst inquiry's terms of reference, as with the coroner's inquiry, were very extensive and, in summary, they included that the inquiry inquire into the following matters:

> Firstly, the circumstances, including all considerations by the Assembly, the executive, ministers, officials and agencies relating to the demolition of the Royal Canberra Hospital since the Acton-Kingston land swap;
>
> secondly, the circumstances relating to the process followed in reaching a conclusion as to how to demolish the Royal Canberra Hospital and, in particular, amongst other matters, what issues were considered, risk analysis, whether any political or other considerations influenced the decision to implode, and whether the decision to implode was properly authorised;

> thirdly, the circumstances surrounding the processes followed to determine the successful contractor, including assessment of necessary expertise to undertake the contract;
>
> fourthly, the circumstances surrounding and the process followed in the development of the implosion contract, including, amongst other things, whether the contract took into account applicable Australian standards and assurances relating to safety of the proposed implosion;
>
> fifthly, the circumstances relating to and the appropriateness of the decision to invite spectators to view the implosion and, in particular, any safety issues considered and any advice given to government; and
>
> finally, any other related matters.

The Smethurst inquiry was never reconvened. In fact, following the handing down of the coroner's report on 4 November 1999, Major General Smethurst wrote to the former Chief Minister advising her that he believed that the inquiry should not proceed on the basis that the coroner had properly and fully addressed all matters that had originally been put to the inquiry.

Specifically in his letter of 18 November 1999, Major General Smethurst says:

> I have examined the (Coroner's) report and have formed the view that as the Coronial Inquest would seem to have effectively covered the issues on which I was required to inquire and report, there would appear to be no justification or purpose in my Board of Inquiry continuing.

At page 23 of his report, the coroner stated—and I think this has been referred to before:

> It is out of extreme caution that a wide ranging inquiry was undertaken to ensure that no issue was missed and therefore it seems to me on review that there is no necessity now to reconvene the Smethurst Inquiry or any other inquiry.

Major General Smethurst went on to clarify that under the terms of the Inquiries Act the appropriate means for terminating the inquiry under the circumstances was for him to tender his resignation, and he did so in that letter. The former Chief Minister acknowledged this, accepting the Major General's resignation in a response letter dated 10 December 1999. Accordingly, Mr Speaker, it is clear that the advice of both inquiry heads is that there is no need for any further inquiry on this matter.

I point out, however, that the government has not only acted on the findings of the coroner, with respect to those matters which it can, but has followed up its actions with a separate independent administrative review conducted by Tom Sherman AO. As members of the Assembly will remember, Mr Sherman conducted this review shortly after the coroner released his findings, and his report was tabled in the Assembly in February last year. Mr Sherman's report identified some 30 recommendations and other comments by the coroner which required follow-up action by the government. He found at that time that of these:

(a) seven recommendations had been substantially implemented;

(b) 14 recommendations were well on the way towards implementation; and

(c) five recommendations required more work to achieve implementation.

The government has been active in following up on all unaddressed or incomplete issues identified by Mr Sherman and recently Mr Sherman was re-engaged to do a follow-up assessment of the government's progress in implementing the work he had identified. I understand that his report will soon be completed.

Finally, as the Chief Minister has said, there are matters before the court—the initial matters before the Supreme Court; the criminal matters that the DPP took some action on recently but are still to be finally completed. Of course, there are also the civil matters before the court in regard to procedures issued last year. Those are ongoing and, indeed, things may well come out of them before all the matters are finally dealt with. So there are a number of issues that are outstanding, this matter is still before the court and, indeed, Tom Sherman is still to report back in relation to the matters I mentioned.

MS TUCKER (4.00): The Greens are interested in the debate that is taking place today. We have not got a definite position at this point on whether we think there should be some other kind of inquiry. We obviously want justice for the Bender family and I think it is important that justice is seen to be done. This is something that we see often in regard to a tragedy such as the Lockerbie bombing, a crime or an injustice. There is a very strong human response and people want to see justice being done. Right now it appears that there are a lot of people in Canberra, particularly, as Mr Stanhope said, the immediate family of the child who was killed, who are not convinced that that is the case.

I agree with Mr Stanhope's condemnation of Mr Humphries' attempt to attribute some lower motivation. Certainly, I do not believe that this is the case. This is about working out what is the best way to ensure that people who have suffered as a result of this feel that justice has been done. People want steps to be taken to ensure that this will not happen again, and if that means that we have to have further investigation, I think that is worth supporting. There are definitely arguments for Mr Kaine or any other member of this place wanting to pursue the establishment of an inquiry to look at those matters which were not looked at—and I agree with Mr Stanhope that things have changed since the coronial report.

On the question of whether or not you can have concurrent inquiries, I have to say that I have had experience with the discussion related to the disability inquiry. I was closely involved with that debate and I had the opportunity to talk to legal practitioners around Australia about whether or not it is acceptable, possible or constructive to have concurrent inquiries of the kind that we would have had if the Smethurst inquiry had been taking place at the same time as the coronial investigation or the current criminal cases.

There are obviously very big differences of opinion in the legal fraternity. A couple of prominent figures here have a particular view which this government has supported, but I do not think it is at all that definite. As I said, I have spoken to many other people with expertise in the field who have a different view. So that is obviously a subject of debate.

I agree with what has been said so far, and I think the Liberals are saying this too: that we want to make sure that this never, ever happens again; that it was an extremely sad day for this city; and that it is important that justice is seen to be done. If indeed a further inquiry will achieve those outcomes, then we would support it. So I look forward to further debate on the subject.

MR DEPUTY SPEAKER: That completes the discussion on the matter of public importance.

Standing committees
Proposed reference—2001-2002 draft budget

Debate resumed.

MS TUCKER: I seek leave to speak again.

Leave granted.

MS TUCKER: I want to respond to the argument Mr Humphries put before lunch. To be honest, I am not sure that he knows what my amendment does. I could not make sense of his argument at all. He seemed to be implying that we were forcing government to undertake its budget consultation in an inappropriate way and that the role of the executive was separate from the role of the parliament. But Mr Humphries has put a motion in this place calling on the committees to take on particular work. The committees do not belong to the executive; the committees belong to this parliament. This parliament is debating whether or not the committees will take on this work. All my amendment does is put a view on that topic of discussion, and it is totally appropriate. I do not think Mr Humphries is on the right track.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (4.06): Mr Humphries, unfortunately, has been called away. The government will not support Ms Tucker's amendment.

MR QUINLAN (4.07): I will say a few words on the amendment. I agree with what Ms Tucker has said. It is from this place that committees get their instructions, and it is important that we remember that. I guess this motion shows an attitude from the government. If I could paraphrase what I have heard from Mr Humphries in justification of the draft budget, he said, "We are the government, and we would like to stay the government, but we would like to spread the responsibility of government. We would like the credit of the position of government, but we would very much like to share the blame and the downsides." We should remember that this is an election year. I support your amendment, Ms Tucker.

Question put:

That **Ms Tucker's** amendment be agreed to.

The Assembly voted—

Ayes 6		Noes 7	
Mr Berry	Mr Wood	Mrs Burke	Mr Smyth
Mr Hargreaves		Mr Cornwell	Mr Stefaniak
Mr Quinlan		Mr Hird	
Mr Stanhope		Mr Kaine	
Ms Tucker		Mr Moore	

Question so resolved in the negative.

Original question resolved in the affirmative.

Crimes Amendment Bill 2000 (No 3)
Detail stage

Bill as a whole.

Debate resumed from 13 February 2001.

MR STANHOPE (Leader of the Opposition) (4.14): Mr Deputy Speaker, I ask for leave to move amendments Nos 1 and 2 circulated in my name together.

Leave granted.

MR STANHOPE: I move amendments Nos 1 and 2 circulated in my name *[see schedule 1 at page 291]*.

At the outset let me say that the Labor Party is not totally opposed to the government's definition of offensive weapon. We do not find it totally objectionable. There is an aspect of it that we feel to be unacceptable; that we do object to.

The aspect of the definition of offensive weapon which my amendments go to is the phrase "anything capable of being used" included within the definition. That particular phrase permits what might be regarded as otherwise innocuous objects possessed by a person to be defined—in fact, they are defined—as offensive weapons, regardless of the circumstances in which the objects are possessed or the intent of the person possessing them. That is the current situation with the government's definition of offensive weapon. The inclusion of the words "anything capable of being used" as a qualifier of what is an offensive weapon, in effect, deems any object to be an offensive weapon, without any regard to the circumstances in which it is possessed or without any regard to the intention with which it is carried, or the purposes for which it is proposed to be used by the person carrying it.

I and the Labor Party appreciate the difficulty the police have in proving intent when a charged person denies any intentional wrongdoing. However, that difficulty is no reason for making persons going about their everyday business suspected criminals because of the contents of their pockets, handbags or briefcases, or indeed because they are carrying a handbag, a briefcase, a pen or anything else. That is what the definition does.

Otherwise innocuous objects such as ballpoint pens, keys, nailfiles, combs or handbags could be classified as offensive weapons under the government's definition and persons carrying them charged with offences under the Crimes Act. That is the potential that this definition of offensive weapon creates. Everybody is potentially liable to be charged with an offence under the Crimes Act simply for possessing these everyday objects. That is an absurd result. It is quite absurd that through a definition of this sort we render the carrying of day-to-day objects potentially criminal.

The difficulty—and I guess this is the difficulty the government seeks to address—is that all of these objects, and in fact any object, can be dangerous when wielded with intent to harm another person in a fight. To overcome this problem, I propose within the amendments I have moved that we follow the New South Wales precedent of setting out some dangerous weapons and then allowing for a catch-all provision based on the fact that the thing must be made or adapted for an offensive purpose or the thing in the circumstances must be used, intended for use or threatened to be used for offensive purposes. It takes out of the definition this notion of anything that is capable of being used as a weapon, irrespective of any need to find or determine an intention.

The definition of offensive weapon which the New South Wales authorities and the New South Wales police find adequate is one that one would expect in the criminal law, one which requires some notional linkage to the need for there to be some intent, some mental element, some mens rea, some intention in the mind of the person carrying the object to use the object for an offensive purpose.

Even though the "capable of being used" phrase is dropped from this definition, the definition is still broad enough to allow the police a wide discretion in determining what is an offensive weapon. In the New South Wales definition there still is that capacity. There is an enormous capacity in the New South Wales definition to allow the police that discretion in determining whether or not something is an offensive weapon. The police in New South Wales do not seem to have any difficulty working within that definition, which has been in place for many years, unlike the ACT definition, which has been in place for just six or seven weeks.

I contend, and the Labor Party contends, that the police should have no difficulty in upholding charges involving possession or use of offensive weapons, as I have defined that term, against persons who might, for example, use a bottle or beer glass in a fight or wrap a metal watchband around their knuckles before hitting an opponent.

To conclude, I go to the definitions to illustrate the point. The definition of offensive weapon currently contained within the Crimes Act, in effect the definition which the Attorney-General now proposes replace other definitions of offensive weapon, refers to the capacity to use the weapon for an offensive purpose. There is a small but very significant difference between the two definitions. As I said, the definition which the

Attorney seeks to utilise is a definition which contains the words "anything capable of being used". An extension of that definition, in effect, renders every single item anybody would care to name potentially or prima facie an offensive weapon, so we create this scenario where anybody carrying anything who falls foul of the police for whatever purpose can be deemed, just on the basis of the definition, without any suggestion of intention, to be in possession of an offensive weapon.

That, it seems to me, is far too extreme a definition. It is a definition which potentially renders everyone, on the basis of a decision by a member of the police, a criminal and subject to a criminal penalty. It is far too broad a discretion. It is unnecessarily broad. There is no need to provide the police with such an extensive power.

There is a perfectly acceptable alternative in the formulation that is used in the definition of offensive weapon that is utilised in the New South Wales Crimes Act. The New South Wales Crimes Act definition, the one that I am seeking to adopt, is that an offensive weapon is:

> (a) a dangerous weapon, or
> (b) any thing that is made or adapted for offensive purposes, or
> (c) any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm.

Why would you possibly need a more extensive definition than that? Why do you need to reduce that New South Wales definition and for the government to say, "Let us remove the need for intention; let us remove from this definition of offensive weapon any suggestion that there has to be an intention that the object be used for a criminal purpose; and let us just reduce it to a definition which says 'anything that is capable of being used' without any suggestion that the person in possession of the object need have any intention to use it for any unlawful purpose"?

MR STEFANIAK (Minister for Education and Attorney-General) (4.24): A single comprehensive definition of offensive weapon was passed without comment by this Assembly in December 2000 in the context of the stalking amendments. Mr Stanhope indicated then that—

Mr Stanhope: That is not true, Bill.

MR STEFANIAK: I think you will find it is, Mr Stanhope. When you introduced your amendments, you made reference to the stalking legislation. You thought the definition was okay in that context.

Mr Stanhope: I do, in that context.

MR STEFANIAK: What is the difference? It is now proposed to apply that definition to the Crimes Act. Currently, the act contains a number of different definitions, for no apparent reason. This proposal did not come out of thin air. It was circulated for comment to the major stakeholders in the criminal justice system—that is, to the DPP, Legal Aid, the police and the courts. None of those agencies raised any concerns at all about the proposal.

Mr Stanhope: Shame on them!

MR STEFANIAK: Shame on the courts, Mr Stanhope? They are the ones who administer it.

Mr Stanhope: Absolutely. Shame on them.

MR STEFANIAK: Shame on the courts? I do not think our judges and magistrates would particularly like that.

Mr Stanhope: Legal Aid did not raise any objection?

MR STEFANIAK: No, they did not say anything. The definition is clearly linked to intent or ability to cause injury or incapacitate a person. It is broad enough to include everyday articles such as hammers, kitchen knives, cricket bats, baseball bats, pickaxe handles—

Mr Stanhope: Combs, handbags, pens.

MR STEFANIAK: Yes, even maybe an umbrella, depending on how you use it. Its operation will be confined appropriately by the individual offence provisions which use it. Mr Stanhope is concerned that a person, according to him, could be charged with possessing an everyday article such as an umbrella. It is not an offence under the Crimes Act to possess an offensive weapon per se. You have to have additional grounds to be satisfied before an offence is proven.

I will give a couple of examples. For example, section 493, which deals with possession of an offensive weapon, requires the possession to be in a public place and in circumstances likely to cause alarm. A person could not be charged with carrying an umbrella or anything like that in normal circumstances under this section.

Section 494, "Possession of an offensive weapon with intent", requires the circumstances to include intent to commit a violent offence with the weapon. If such intent is proven, articles such as umbrellas should rightly be considered as offensive weapons.

Section 27 has an offence of using against another person an offensive weapon likely to endanger human life or cause a person grievous bodily harm. That restricts the definition in the context of this particular offence.

Police, prosecution and the courts will use their commonsense. It will be the courts that will decide whether a weapon or an article that is used is in fact an offensive weapon or not. The courts have absolutely no problem with this effectively consolidated definition we are now seeking to have continued throughout the act.

It should also be noted that the current definition in section 494, which refers to anything capable of being used, has created absolutely no problems that we know of in the past. I hope Mr Stanhope is not going to suggest that our courts are nothing other than scrupulous in ensuring that fair play occurs and that the defence is given every right it is entitled to under the law to the protection of the law and to the full measure of the law. In

my experience in the courts from 1979 onwards, I cannot think of any instance when any power the court had was misused to the detriment of a proper defence. I would hope that Mr Stanhope, being the civil libertarian he is, is not casting a slur on our courts. I am sure he is not. I reiterate that no-one, none of the agencies, including the courts, which are the ultimate arbitrators of this provision, have any problems with it. It is a commonsense provision.

Mr Stanhope's proposal refers to offensive purposes. That is vague. That could be interpreted very broadly. A lot of work has gone into our provision. It is a commonsense provision. It has already been put into legislation. No-one has complained about it. Everyone is happy with it. If anything is slightly wrong or slightly controversial, someone from the agencies as diverse as the DPP, Legal Aid, the courts and the police will come up with objections.

Our proposals have gone through two Attorneys-General. Stakeholders comment quite often, and there are differing views on proposed legislative changes, depending on a person's perspective. That is quite reasonable. There has been no difficulty with this type of provision. It is not going to cause anyone great concern. It has flexibility. Commonsense is used in situations like this, and the court has the ultimate say in the interpretation of this law. The courts have no problems with this, so I commend it to the Assembly.

I do not think Mr Stanhope's amendments will assist. In fact, they are more confusing and would take us back to when definitions appearing in the Crimes Act at various sections did not help the situation. This certainly clarifies it. It is simpler. On the advice I have from all the agencies, it is simply not a problem.

MR DEPUTY SPEAKER: Members, though the bill was introduced by Mr Humphries, Mr Stefaniak is now the Attorney-General. I propose to recognise Mr Stefaniak as the minister in charge of the bill, if that is the wish of the Assembly. I am sure it is. That being so, that is the course we will be following.

MS TUCKER (4.30): I want to correct something I said when this debate started. I was concerned that there was a change to the definition of loaded weapon, but I realise now that I misunderstood that. To clarify it for the record, I do not think that is the case. But new concerns have been raised. New concerns raised by Labor and covered by minor amendments seem to be quite significant. I listened to Mr Stefaniak and to Mr Stanhope, and I have talked to legal practitioners who are supportive of Mr Stanhope's proposal and who feel that there is an inexactness which could possibly be used in some way which is not desirable.

Mr Stefaniak said that he thought it would be a retrograde step to support Jon Stanhope's amendments, because it would bring back confusion. I do not see how that is possible if it is just the definition. He is improving the definition by making sure that the concept of intent is connected to the thing that could be used as an offensive weapon. It seems to me that there is no way that that could be a problem. It improves the definition. I do not know whether this is just a case of having to win for the sake of it. If it is consistent, it will not bring back confusion. There will still be one definition, as I understand it, which is what you want.

Mr Stefaniak: That is what we have now, which we did not have before.

MS TUCKER: That is right. Mr Stefaniak is saying that he wanted to get one definition. Agreed. Good idea. Mr Stanhope is adding to that single definition to make sure that the intent concept is linked to it.

Mr Stefaniak: The intent is there in those sections I read out.

MS TUCKER: Mr Stefaniak said that we know that this definition has worked and there has been no problem but, as I understand it, it has been in place only since December 2000 and only in respect of stalking, so there has not been enough time to know whether there are problems. It applies only in a specific area.

Let me state my understanding of the research we have done trying to get a position on this. Before December 2000 the definition of offensive weapon in section 4 of the Crimes Act said only that it included an imitation or replica of an offensive weapon or an instrument, as the case may be. Offensive weapon is defined more precisely at four different places in the act that applied to different parts. Specifically, these definitions are in part III, "Offences against the person". Section 33, "Possession of object with intent to kill etc.", states:

> A person who:
> (a) has possession of an object capable of causing harm to another person; and
> (b) intends to use the object, or to cause or permit another person to use the object, unlawfully to kill another person or cause grievous bodily harm to another person;
> is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

So there is intent there. The key word here is the "and" between the paragraph beginning with "has possession" and the paragraph beginning with "intends". In part IV, "Offences relating to property", section 93 states:

> "offensive weapon" means an article made or adapted for use for the purpose of causing injury to or incapacitating a person or which any person having it with him or her intends to use for that purpose;

Part XIV states:

> "offensive weapon" means any thing made or adapted for use for causing bodily injury, or intended for that use by the person who has it in his or her possession.

Section 494, "Possession of an offensive weapon with intent", states.

> (1) A person who has on his or her person an offensive weapon or a disabling substance, in circumstances indicating intent to use the weapon or substance to commit an offence involving actual or threatened violence, is guilty of an offence punishable ...
> (2) In subsection (1):
> "disabling substance" means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession;"
> "offensive weapon" means any thing capable of being used for causing bodily injury.

On passage of the Crimes Amendment Bill 2000 (No 2), to do with stalking, the definition at section 4 was amended to read:

> (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
> (b) anything intended for that use ...

There is an "or" there, not an "and". That is what we are worried about. This definition applies across the Crimes Act, except in parts of the act which have a different definition. In effect, at that time it applied only to offences against the person, except for the situation explained at section 33. Today's bill proposes to remove all other definitions of offensive weapon from the act, leaving only the definition at section 4. This is a problem, because the definition introduced last year in section 4 is much looser because of the phrase "capable of being used".

Many objects are capable of being used as weapons—shoes, staples, beer glasses, handbags, et cetera. This definition at section 4 does not allow any contextualising arguments to be used in defence of someone accused of possessing an offensive weapon. Jon Stanhope's amendments would simply clarify that, I would have thought.

I have another example of a problem. Maybe the Attorney could respond to this. In the Crimes Act 1900, section 101, "Armed robbery", states:

> A person who commits robbery and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

Compare that to the crime of robbery, which is dealt with at section 100 of the Crimes Act 1900:

> A person who steals and, immediately before or at the time of doing so, and in order to do so, uses force on another person, or puts or seeks to put another person in fear that he or she or any other person will be then and there subjected to force, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
>
> A person who assaults another person with intent to rob is guilty of an offence punishable, on conviction, by imprisonment of 14 years, but a person who is convicted of armed robbery can be sentenced to 25 years and there is reference in that section to an offensive weapon. If the offensive weapon is not connected to intent—

Mr Stefaniak: You have to have intent to commit an armed robbery.

MS TUCKER: But how do you know that?

Mr Stefaniak: You cannot accidentally commit an armed robbery.

MS TUCKER: But there is the question of sentencing. You are saying that there would be no way that this offensive weapon definition could have an impact on the sentence. You are telling me that that is not possible, are you?

Mr Stefaniak: If I come up to you with a gun, a knife or a baseball bat and say, "Give me your money or I will shoot you, stab you or bang you on the head," I am committing an armed robbery. If I simply come up to you, grab your bag, threaten to punch you but do not have anything in my hand and you hand over your money, that is a robbery, because I am not using an article to threaten you with. I do not have a weapon.

MS TUCKER: I am listening to what Mr Stefaniak is saying. Maybe he is correct. Mr Stanhope was listening also. Even if that is not correct and I have misunderstood—I do not claim to be an expert, and I am trying to grapple with it—I still cannot understand why it is such a problem to link the definition of offensive weapon to intent. Mr Stefaniak has not argued why it is a problem to improve that definition by linking it with intent. I do not understand why that is not a slight improvement. Mr Stefaniak said in his argument that it is a problem because it brings in all sorts of different definitions, but I understood that there was going to be one definition. Is that correct?

Mr Stefaniak: We have put in one definition. Mr Stanhope is trying to get the New South Wales—

MS TUCKER: Isn't he improving it?

Mr Stefaniak: No. He is saying he is. We are saying he is not. We are saying we have one definition we want to use.

MS TUCKER: Do we still end up with one definition, improved or not, according to your position?

Mr Stefaniak: Yes.

MS TUCKER: So it is clear that we are not creating lots of different definitions by supporting the amendments. All we are doing is adding something to the definition which will be—

MR DEPUTY SPEAKER: Your time has expired, Ms Tucker. Would you like an extension of time, or are you done?

MS TUCKER: I will finish at this point, and I will listen to the responses.

MR MOORE (Minister for Health, Housing and Community Services) (4.41): This is an issue of civil liberties and hence an issue on which I separate myself from government. I have listened to the debate, and I am not persuaded by the arguments that Mr Stanhope and Ms Tucker have put up. I can see where they are coming from. It is a difficult decision to be made, but in this case I will be opposing the amendments.

MR STANHOPE (Leader of the Opposition) (4.42): I will respond briefly to a couple of points. I want to make some comment on the Attorney's opening remarks in relation to the definition of offensive weapon which we accepted in December. It may be that I did

not specifically address the definition of offensive weapon in that debate—I cannot recall—but it is fair to say here and now, in relation to the point the Attorney makes, that I and the Labor Party made a very specific decision in relation to the stalking legislation.

Stalking is a most difficult and intractable offence to deal with. Stalking is an offence almost in a class of its own. The Labor Party on that occasion took a deliberate decision to support the government's legislation in relation to stalking, in recognition of the fact that dealing with stalking is incredibly difficult. Stalking is an intractable problem, and it raises the purpose for which a stalker carries an umbrella or a walking stick.

It seemed to us that there were very good reasons to seek to deal appropriately with that offence, which is an offence that is particularly difficult and traumatic, almost invariably, for women. Difficulties surround the threat that is presented by being stalked by somebody who has either rendered violence or threatened violence and who in the stalking activity carries something perhaps as innocuous as a briefcase, a handbag, a walking stick, an umbrella or any other object. We decided in that instance to support the government's legislation, acknowledging that it was strong and tough and was legislation that raised a significant number of issues to do with intent to deal with the specific difficulties of that offence.

Attorney, to some extent, I regret that you used the Labor Party's support of that legislation to make a point in relation to the definition of offensive weapon generally in the Crimes Act. The Labor Party position in relation to the stalking amendment was to support a specific provision for a particularly difficult offence. I make that point to clarify the issue.

On this issue, we believe something and you are not persuaded. I have made the point that the definition which was incorporated into the stalking amendment which we accepted is not a definition of offensive weapon that we think should prevail universally under the Crimes Act. That is our position.

By this definition, we are moving back to views that prevailed about the law many years ago. They are views we have progressively moved against as we have become more progressive and as we as a community have become more demanding about rights and civil liberties and the need to ensure that there is no undue trespass on the rights of citizens. It was this sort of provision that in the past led us to those sorts of conclusions.

I persist with my view, Attorney, that the inclusion within your definition of offensive weapon, in the way and in the place you have included it, of the phrase "capable of being used" unnecessarily renders every object that any person carries potentially an offensive weapon, without any suggestion within the definition that there has to be any intent associated with the carrying of the object. That is a position you simply do not need. You do not need to provide so expansively in that definition.

The definition contained in the New South Wales Crimes Act, I would have thought, would have been fairly significant evidence to you that you do not need to do it. The New South Wales police force manages quite well with a definition of offensive weapon that is not as broad as the definition which will now prevail in the ACT.

The Attorney made an interesting point about the doubling up in relation to intention. I have to confess that it is not a point I came prepared to rebut or debate. I do not have a copy of the Crimes Act with me here, and it would take me too long to research in any event. But I can use the example that Ms Tucker used. It is a good example. It illustrates the point. Attorney, in your responses to Ms Tucker, you did not do justice to the issue of armed robbery that Ms Tucker raised. Section 101 reads:

> A person who commits robbery and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon ... is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

The person has already been convicted of robbery. The possession of the offensive weapon is over and above the act of robbery. The person has committed the robbery. He has been convicted. This is a second offence.

Mr Stefaniak: No, it is not. It is the one offence. It is the offence of armed robbery.

MR STANHOPE: It is not. It is a separate offence. A person who commits robbery and at the time of doing so has with him or her an offensive weapon is guilty of an offence punishable, on conviction, by imprisonment for 25 years. It is a second offence.

Ms Tucker: And there is no intent linked with the offensive weapon.

MR STANHOPE: It is a second offence, and there is no intention around the issue of being in possession of the offensive weapon at the time of committing the robbery. The offensive weapon may not have been used for the robbery.

Mr Stefaniak: It is an element of the offence. Just make your submission, then I will tell you the law.

MR STANHOPE: No, you are wrong. A person who commits robbery and at the time of doing so has with him an offensive weapon is guilty of an offence punishable, on conviction, by imprisonment for 25 years. That does not go to the elements of robbery with an offensive weapon. There is a second offence there. This is the point that Ms Tucker made which you did not appropriately respond to. There is a second offence. What if the offensive weapon had absolutely nothing to do with the commission of the robbery?

Mr Stefaniak: Then he or she would be charged with robbery. It is quite simple.

MR STANHOPE: No, you cannot say that. The possession of the offensive weapon, which is now anything that he was carrying, goes to the offence. It is now a definition of offensive weapon which removes any notion of there being a requirement to prove intention in the carrying of the object. That is precisely what it says. I did not come prepared to debate the particular offences, but the issue having been raised and having listened to your defences of the provision, I raise the matter now but not as fully as I might have liked to do.

The bottom line, Attorney, is that you are introducing into the Crimes Act a definition of offensive weapon that is inestimably broader than the definition of offensive weapon contained in the New South Wales Crimes Act, and you do not need to do it. There is no need for this definition in the ACT Crimes Act. It is simply not necessary for you to move this far. You do not have to do it.

There has been no call by anybody for this particular provision. I am sure the police did not call for this provision. I am sure the DPP did not call for this provision. I am sure the courts did not call for this provision. You are imposing a definition that was uncalled for, that is unexplained and that is unnecessary.

MR STEFANIAK (Minister for Education and Attorney-General) (4.51): I think there is a fair bit of ignorance running around here. Under division 2 of the Crimes Act, "Theft and related offences", there is an offence of theft in section 92, an offence of minor theft in section 92A, an offence of robbery in section 100, an offence of armed robbery in section 101 and an offence of burglary in section 102.

In criminal law there are elements which need to be proved to make up an offence. In the offence of armed robbery the elements include someone having a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive. The other element of that offence is that it has to be a robbery—in other words, taking money or valuable possessions from someone or, if it is an attempted robbery, at least attempting to do so. Similarly, robbery includes anyone who steals. Ms Tucker has taken that out. Somebody who grabs a handbag, for example, could be charged with robbery. Those offences are separate offences, and in any offence there are certain elements which a prosecution has to prove to make up the offence. So you cannot say there are two offences. They are individual offences. That is why they have individual sections.

Mr Stanhope: Yes, we agree with that.

MR STEFANIAK: I am glad you do now. I was not too sure before that you did. I am little bit amazed, and I do not think Mr Stanhope helps his argument by saying the definition is fine for the offence of stalking because that is in a class of its own, yet we need a different definition, which he now seeks to put in, for any other description of offensive weapon. That makes a nonsense of his claims.

The current definitions in the Crimes Act which this bill seeks to clear up, number three. Ms Tucker, I provided you with these and you read them out. One definition is:

> "offensive weapon" means an article made or adapted for use for the purpose of causing injury to or incapacitating a person or which any person having it with him or her intends to use for that purpose;

That is used in section 101, "Armed robbery", also section 103, "Aggravated burglary". There is another definition of offensive weapon in section 493, "Possession of offensive weapons":

> "offensive weapon" means any thing made or adapted for use for causing bodily injury, or intended for that use by the person who has it in his or her possession.

Then in section 494, dealing with possession of an offensive weapon with intent to commit an offence, the definition is:

> "offensive weapon" means any thing capable of being used for causing bodily injury.

We propose to replace those definitions with a single comprehensive definition. If it is all right for stalking, I can think of any number of other equally worrying instances where a definition like that should apply. It is a simpler way of doing it. If it is okay for stalking, I cannot see why we now need what Mr Stanhope is suggesting—effectively, two definitions. The whole idea is to have one definition. Until today, no-one had expressed grave concerns about it, certainly not the relevant agencies. I do not think I need to say more.

MS TUCKER (4.55): I still do not agree with what Mr Stefaniak is saying. There are two crimes: robbery and armed robbery. Mr Stefaniak said to me before that you cannot commit a robbery without having intent. But if you commit an armed robbery, you may be sentenced to a much longer term of imprisonment. The definition of armed robbery says:

> A person who commits robbery and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon ...

Mr Stefaniak: Because it is more dangerous. That is why it is a separate offence.

MS TUCKER: This is the key point, Mr Stefaniak. You have not convinced us at all. You can nod your head to Mr Rugendyke. He has not said a word. An offensive weapon will be critical in determining whether or not a person is guilty of an armed robbery. But you now have a definition of offensive weapon which does not link with intent. I am not saying the person did not intend to rob the supermarket. This is what we are concerned about. You have brought in a definition which is so broad that it does not link with intent. That language, "offensive weapon", now has no linking with intent, and that could be the difference between 14 and 25 years.

I have been talking to civil libertarians in this town. Mr Moore should be listening to this.

Mr Stefaniak: You still have sections 493, 494 and 27 but a common definition for offensive weapon. You still have intent. You have to have intent.

MS TUCKER: The Attorney says you have to have intent. This says you commit an armed robbery if you have, amongst other things, an offensive weapon. What is an offensive weapon? It is anything capable. There is no link—

Mr Stefaniak: And the intent to use it.

MS TUCKER: Where? You have changed the definition of an offensive weapon so it does not include intent.

Mr Stefaniak: If you walk up to someone with an umbrella and say, "Give me your money" and you do not use the umbrella in a threatening way, there is no intent. It is a robbery. It is simple.

MS TUCKER: I am sorry. I cannot believe these people are bloody lawyers. I am going to support Jon Stanhope's amendments. I am very scared about the quality of the arguments Mr Stefaniak has been putting up. I am no expert. This is logic. Legal practitioners in town who are working with disadvantaged people are concerned about this. You say you have support from Legal Aid. Maybe you have. I do not know that, and I am certainly going to follow that up. Maybe you got it on the stalking.

By the way, I am quite happy to say here that I did not look at this definition when we debated stalking. I am quite happy to admit that my office does not always have the time to look at every single detail, and I think we overlooked something when we debated stalking. I am not saying it is necessarily fine. I need to do a lot more research and to look at what that means and determine whether it is different. What I am hearing from people working in the field is that this is dangerous and open to manipulation. You have not convinced me that that is not the case. I am hoping that Mr Stanhope's amendments get up, and I am hoping Mr Rugendyke, Mr Kaine and Mr Moore speak about why they do not support Mr Stanhope's amendments.

MR STANHOPE (Leader of the Opposition): I seek leave to speak again, very briefly.

Leave granted.

MR STANHOPE: I think the point is made in relation to the point we are seeking to put: the distinction between robbery and armed robbery. No element of the offence of robbery requires the use of an offensive weapon. If there is an offensive weapon in the possession of the person, whether or not the offensive weapon is used for the armed robbery, it becomes an offence of armed robbery. Robbery at section 100 is stealing from a person without the use of an offensive weapon. Armed robbery is robbery by a person whilst in possession of a arm or an offensive weapon.

Take the scenario of a robbery. How is a robbery committed? Somebody walks up to somebody in the street, sticks their hand in their coat pocket or sticks their finger in the person's back and says, "Give me your money." It is a robbery. A person walks up to a person in the street, sticks their hand in their pocket or sticks it in the person's back and says, "Give me your money" but in their other hand they are carrying a walkman. It becomes an armed robbery, under your definition.

A person walks into the street, sticks their finger into somebody's back and says, "Give me your money. Give me your wallet." The person takes the wallet and walks away. They do not have any other object on their person. They have committed a robbery. They are susceptible to a 14-year prison term.

They can do the same thing, behave in the same way, but have on their person an object which, in the words of the Attorney's definition, is capable of being used for causing injury. They might not use it for causing injury. They might never take it out of their pocket. The person robbed might not know that the person is in possession of it; that the person is carrying the offensive weapon. The offensive weapon might be a pen in the

person's coat pocket which they did not at any stage remove. The police, when they arrest the person, might take the pen from the person's pocket.

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 STANHOPE: We have converted an offence of robbery, with a prison term of 14 years, into an offence of armed robbery, carrying a penalty of 25 years, on the basis that the arresting officer used his discretion to decide that it was not a robbery, because the person was carrying an object which was capable of being used for causing injury. It is a discretion which you do not need to give to the police. There should be an element of intent. The object may never have been removed from their pocket. It may never have been used for the purposes of the robbery.

There should be some notion of intention. You are giving a level of discretion that you do not need to give. Your own example, Attorney, illustrates the point precisely: it is possible to turn the offence of robbery into the offence of armed robbery on the basis that the person who committed the offence had somewhere on their person an object.

MR MOORE (Minister for Health, Housing and Community Services) (5:03): I am pleased that Mr Stanhope gave that example, because it reinforces the position I have taken in not supporting his amendments, for a number of reasons.

Mr Stanhope: We never expected you to, Michael.

MR MOORE: Mr Stanhope interjects, "I never expected you to, Michael." The reality is that I have supported many amendments you have moved with regard to civil liberties over the last two years. Should the person with the walkman be charged in the way that Mr Stanhope suggests, then it is the judge who makes the decision. It is the judge who has that prerogative. So that is appropriately tested in a court of law.

The more complex we make our definitions, the more loopholes we create. Therefore, if it is possible to give a broad definition that is interpretable by the courts, then it is the courts that we use to protect our civil liberties. I have come into this place on a number of occasions and said, "Where I am most concerned is where you remove the discretion of the court." That is the thing that tests civil liberties. That is the thing that removes the civil liberties, as far as I am concerned. In this case, whilst I think there is some weight in Mr Stanhope's arguments, it is not as much weight as in the argument for having a broad definition and allowing the courts to interpret that definition.

MS TUCKER: I seek leave to make a very quick response to Mr Moore.

Leave granted.

MS TUCKER: Mr Moore said he supports discretion for the court. I think you are removing it. You are taking out the possibility of looking at the context and the intent. That is the whole point.

MR HARGREAVES (5:05): We have to go back to the definition of robbery. Robbery is theft or larceny with violence. "With violence" should be enough. You do not have to go down the track of defining these things. If I rob someone and I have a set of car keys in my hands, it is up to the policeman to decide whether I was using the car keys to nick off—

Mr Stefaniak: It is up to the court.

MR HARGREAVES: It is not up to the court. It is up to the prosecutor to lay the charge. It is up to the arresting officer to decide whether the car keys in my hand were to be used to hop in my car and get away or as a knuckleduster to inflict violence on somebody. It is unnecessary.

I suspect that the government will not go along with these amendments because Mr Stanhope put them up. Instead of saying, "We will not go along with this," they should recognise that Mr Stanhope is qualified at law, as two learned people opposite are. He is supporting the intent of the legislation and he is pointing up what, to him, is a loophole. They should be saying, "We can see some measure of compromise coming from the other side."

There is confusion. We are trying to give to the police a discretion which they do not need in the course of making an arrest. The Attorney-General, as a former police prosecutor, would know that they do not need that. There are plenty of offences on the statute books at the moment. All the police have to do is arrest somebody in the commission of a crime and then book them according to the crimes on the statute book. There are plenty at the moment without having to go to this level of prescription or this level of discretion. On top of that, as the Attorney-General well knows, police already have a discretion at common law. We do not need to give them the opportunity to play around with interpretation.

This is unnecessary. I urge Mr Moore to change his mind. I urge Mr Moore to consider again whether the government is opposed to these amendments just because Mr Stanhope put them up. I urge Mr Moore to consider the argument that we do not really need this stuff. There is enough confusion as it is.

The definition of robbery is theft or larceny with the threat of violence. That should be enough. The government is not supporting the amendments because Mr Stanhope proposed them. Mr Moore is being pedantic, semantic and petty about it. I am surprised at the Attorney-General. There are occasions in this place when I feel that he is the only one with any commonsense sitting on the frontbench opposite, and I have said so before, particularly when it relates to such things as corrections. I withhold that view about Mr Moore at the moment. I do not think Mr Moore has had time to prove himself incompetent about that, but I am sure he will endeavour to do his best.

I would urge the Attorney-General to think for a second. Why make a mountain out of a molehill? Acknowledge the fact that there may be a point here and say, "Okay, let us concur with Mr Stanhope, and let us not just be pug-nosed and oppose the amendments for the sake of it."

Question put:

> That **Mr Stanhope's** amendments Nos 1 and 2 be agreed to.

The Assembly voted—

Ayes 7		Noes 8	
Mr Berry	Ms Tucker	Mrs Burke	Mr Rugendyke
Mr Hargreaves	Mr Wood	Mr Cornwell	Mr Smyth
Mr Kaine		Mr Hird	Mr Stefaniak
Mr Quinlan		Mr Moore	
Mr Stanhope		Mr Osborne	

Question so resolved in the negative.

Bill, as a whole, agreed to.

Bill agreed to.

Justice and Community Safety Amendment Bill 2000 (No 2)

Debate resumed from 7 December 2000, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (5.13): Mr Speaker, the Labor Party will support most of this bill which amends a number of bills. Most of the amendments are sensible, for example, the overhaul of the Contractors' Debts Act 1897. It modernises the language of the act and changes the drafting style to make the act much more readable. I look forward to debating with the Attorney the minute detail of the Contractors' Debts Act of 1897 over the next hour or two.

The amendment to the Partnership Act is similarly sensible, particularly in a small place like Canberra where the number of people available to serve the community as directors of private companies and public sector agencies is limited.

I note that the Attorney has tacitly admitted that the drafting of the Crimes (Forensic Procedures) Bill was not as good as it might have been. It is a pity he did not take the opportunity to correct the other drafting error that caused such heated debate last year. That particular error leaves the door open to inappropriate use of the bill against persons who have committed or are accused of committing minor crimes. The Attorney also said in his presentation speech that the amendment of the Crimes (Forensic Procedures) Act is a technical amendment correcting an error, and the explanatory memorandum says that the words being deleted are meaningless in terms of defining in the section what constitutes excluded forensic material.

Mr Speaker, a close examination of the deleted phrase in its context shows that it is not a technical amendment to delete a meaningless word. I am sorry, Mr Temporary Deputy Speaker, I did not realise that the Speaker had vacated the chair.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): You have the call, Mr Leader of the Opposition.

MR STANHOPE: Thank you. I did want to make a point in relation to the use of a Justice and Community Safety Amendment Bill, an omnibus bill, to make significant amendments such as the amendment that is proposed by this deletion of these so-called meaningless words. I make the point, Attorney, that I do not regard the use of an omnibus bill for this purpose appropriate, and I think it is something that you should look at. I think it is something you should take up with your officers.

This is a significant change to the Forensic Procedures Act that you are proposing here and it should not have been rammed through in the way that you are proposing, and in terms of the particular explanatory memorandum that your predecessor applied when tabling this matter. This meaningless term "excluded forensic material", in the context in which it has been misapplied in this amendment, really is quite significant.

The act permits the creation of a suspect's database, but it also makes it a crime for any person to supply details for insertion into that database unless the suspect is convicted before the material is supplied. The question raised, therefore, Mr Attorney—this obviously is the point that has come to your attention—is how could the police legally place a suspect's particulars on the database and match it against the crime scene material before the suspect was convicted? If a suspect was convicted they would no longer be a suspect. They would be a serious offender, and there would be no need for a suspect's database. Hence the error that you are seeking to correct.

This is not a meaningless amendment, and I think it is regretted that the explanatory memorandum describes this as a meaningless amendment in terms of defining what constitutes excluded forensic material. That is all I will say about it. We are happy to support the amendment, Attorney. It is quite obvious that it is necessary. The provision is an absolute nonsense, of course, as it is currently drafted, and we see the need for it to be corrected.

I guess it is in that context that I regret that you did not see the need to correct the other serious mistake that is contained within that particular bill, namely the omission of the word "serious" from section 29 of the act, an omission that does create potentially very serious consequences. That is an amendment that I propose to the bill. Other than that, as I say, we support it. There is that fairly simple but very necessary amendment that I wish to make, but apart from that the proposals are sensible, serious, and necessary.

MR STEFANIAK (Minister for Education and Attorney-General) (5.18): I thank Mr Stanhope for his comments. I heard his point about feeling it should be in a separate bill.

Mr Stanhope: Or appropriately described and explained.

MR STEFANIAK: Or appropriately described. I will take that up with my officers.

MR SPEAKER: You will be closing the debate, Mr Stefaniak.

MR STEFANIAK: I think there may well be good reason why it is here, Mr Stanhope, but I do hear what you say. I understand that the amendment was suggested by Geoff McDonald from the National Model Criminal Code Officers Committee. When the model bill was drafted the relevant words were inadvertently included by the drafter, who was the New South Wales Parliamentary Counsel, and the ACT and other jurisdictions then copied that error. It was subsequently discovered. These bills are a matter of catch-up, but I will seek some advice on the points you raise, Mr Stanhope. I think there may well be instances where a separate bill might be better, but I will seek advice on that because I have some sympathy with the point you raise there.

I note that you are going to move an amendment. I will wait to hear what you have to say about that before I respond. I thank members for their support in principle to this consolidation act.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR STANHOPE (Leader of the Opposition) (5.20): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 2 at page 292]*. The Attorney-General remarked that perhaps this particular other amendment in relation to the forensic procedures legislation does not require a separate bill. I take the point. Perhaps I overstated it, but I think it does require a more fulsome explanation than was given in the explanatory memorandum. That is probably a more appropriate expression of my concern about the way the amendment was handled. Anybody reading the explanatory memorandum would not have been aware of the significance of the change, and I think that should be avoided wherever possible.

The amendment that I have just moved is being moved to rectify what was quite obviously another mistake in the Forensic Procedures Bill when it was presented last year. I did move an amendment at the time, but unfortunately it did not receive the support of a majority of members.

The point of the amendment is that there are three sections in this act, sections 23, 29, and 34, that are written in very similar terms about what police officers and magistrates must take into account when deciding whether to order forensic samples to be taken from a suspect. Two of those sections, 23 and 34, limit the taking of forensic samples from a person charged with an indictable offence. Section 29 permits the taking of samples from a person charged with any offence. It is quite clear that the word "serious" was simply omitted from section 29 at the drafting stage.

The former Attorney-General was not prepared, however, to examine the question calmly and rationally. He stuck his head in the sand and maintained that a person must be suspected of or charged with an indictable offence despite the evidence of his own eyes. The government took the view that there were absolutely no circumstances in relation to which anybody could ever be required under this act to provide a DNA sample unless

they had been charged with an indictable offence, and that is simply not what the legislation says. It is simply not the case. The government's persistent claim that there was not a single circumstance in which any person could be required to undergo a DNA test unless they had committed an indictable offence, a serious offence, is simply not the case. The government left a loophole in the legislation by the omission of the word "serious" from section 29.

I think it is regrettable that the amendment I moved was not made at the time of the debate. I am moving the amendment I moved previously. I move it this time with the fortitude of advice in relation to the particular issue provided by Craig Everson. I am sure the Attorney is very aware of Craig Everson's standing in this town as a senior criminal barrister, one of the most learned and experienced criminal barristers operating in the ACT. Mr Everson is under absolutely no doubt that section 29 of the forensic procedures legislation permits the carrying out of a forensic procedure on a person who has not been convicted of or is not suspected of an indictable offence. I could read Mr Everson's opinion for the edification of members. I have circulated it. I hope members read it, but I would like to take the opportunity to table a copy of the advice, Mr Speaker, if I may do so.

Leave granted.

MR STANHOPE: I present the following paper:

Crimes (Forensic Procedures) Act 2000—Opinion by Craig Everson, dated 13 September 2000.

The clear and unequivocal advice of Mr Craig Everson, whose expertise in these matters cannot be gainsaid or questioned, is that there are circumstances—perhaps they are extreme, and perhaps they are not simple—in which a person could, for instance, be DNA tested for something as simple as selling lottery tickets without a permit. That might be an extreme example, but, nevertheless, it flies in the face of the categorical assurance which the people of Canberra were given by the Chief Minister that there were no circumstances, absolutely none—he repeated it time and time again—in which any person within the ACT could be subjected to a DNA test unless they were suspected of an indictable offence, and that is not the case.

If any member of this place voted on that bill on the basis of the Chief Minister's assurances that there were simply no circumstances in which you could be DNA tested unless you had been suspected of an indictable offence, they were misled and they cast their vote on this provision on the basis of advice that was not correct. This is an opportunity now to close this loophole. This is a very simple amendment. It simply adds the word "serious" to section 29. I am quite sure that if the Attorney were to be honest about this he would simply acknowledge that the word "serious" was inadvertently left out of the section and it simply needs to be put back in.

MR STEFANIAK (Minister for Education and Attorney-General) (5.27): Well, that is not my advice and I have asked the department to look at this. They looked at Mr Stanhope's amendment very carefully. I have read the section a few times. I think I can see where both Mr Stanhope and the learned counsel are coming from, but when you read the full section I think it becomes fairly clear.

My advice, Mr Speaker, is that there is no loophole as claimed by Mr Stanhope and that he is wrong in claiming that the law makes it possible for police to take samples from people against their will even when those people are suspected of committing only minor offences. He is wrong. He was wrong last year and I am advised that he is wrong now.

It is obvious that he failed to read all the relevant provisions of the act. I think there is a danger that he is only looking at subsections 29 (1), (2) and (3) in isolation. The legislative provisions have to be read in context and subsection 29 (1) (b) makes it clear that the police officer who proposes to make an order for a buccal swab must first be satisfied that "the offence for which the person is a suspect is a serious offence". Therefore, unless the police officer is satisfied that the person is a suspect for a serious offence, the sample cannot be taken. There is simply no way in which a person who is suspected of committing only minor offences can be forced to give a DNA sample by buccal swab.

The remainder of section 29 goes on to explain that once the police officer is satisfied that the person is a suspect in relation to a serious offence, he or she must also have reasonable grounds to believe that the suspect committed that offence or another offence and that the forensic procedure will be relevant to proving or disproving that person's involvement in that offence or that other offence. The amendment suggested by Mr Stanhope does not affect the basic requirement in the first part of subsection 29 (1) (b) that the person must be suspected of committing a serious offence. It only affects the second part of that paragraph. The government does not consider that the amendment is necessary, but it has no practical effect and it is of no particular concern whether or not it is included.

I am a bit concerned that Mr Stanhope again seems to have misinterpreted the legislation. I would point out to him and anyone else in this place that you do need to read section 29 totally. I am going to come back to some of the worries that Mr Stanhope has because some of the comments he made do concern me in relation to some of the examples he has given, and they show a certain attitude. I will come back to that.

I want to go through this. Section 29 is divided up into a number of subsections. On page 17 of the act, at the end of subsection (1), there is a note which says:

> Section 107 (Proof of belief) states that the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds.

There are two very crucial subsections in section 29 to protect the rights of persons who might be subject to that section, and they are subsections (2) and (3). Subsection (2) says:

> In deciding whether the carrying out of the forensic procedure without consent is justified in all the circumstances, the police officer must balance the public interest in obtaining evidence tending to confirm or disprove that—

Mr Stanhope: Gary's ego is not worth embarrassing—

MR STEFANIAK: I heard you in silence, Jon. Would you let me finish, please. I will read that again. Subsection (2) says:

> In deciding whether the carrying out of the forensic procedure without consent is justified in all the circumstances, the police officer must balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in upholding the physical integrity of the suspect.

So, basically, there is a public interest test to be applied. Subsection (3) actually indicates what the police officer needs to take into account, and this is where the real protection lies. It says this:

> In balancing those interests, the police officer must have regard to the following matters.
> (a) the seriousness of the circumstances surrounding the commission of the offence and the gravity of the offence.

That is very important. It relates back to subsection 29 (3). The subsection continues:

> (b) the degree of the suspect's alleged participation in the commission of the offence;
>
> (c) the age, physical and mental health and cultural background of the suspect, to the extent that they are known to the police officer;
>
> (d) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the suspect committed the offence;
>
> (e) if the suspect gives any reasons for refusing to consent—the reasons;
>
> (f) any other matter considered relevant to balancing those interests.

There are some very significant protections there, Mr Speaker. Whilst I can understand Mr Stanhope's point, I do have some serious problems with the scenario he paints. When he paints a scenario that someone such as a schoolgirl out selling raffle tickets for the Girl Guides and contravening the Lotteries Act could be tested against her will, I think he is being totally extreme by talking about how she could be physically restrained and, on the order of a policeman, be subjected to a variety of procedures such as an internal mouth swab. I do not think he serves his cause well with examples like that.

I recall some other ridiculous examples given some 10 years ago by the Labor Party about cake stalls when we were debating move on powers. I really think the Labor Party, Mr Stanhope and everyone else in it, need to change their attitude in relation to things like that. Indicating that something like taking a swab from some little Girl Guide selling raffle tickets in contravention of the Lotteries Act could actually happen is just degrading our police force. If you are going to try to use an example to back up what you are saying, for goodness sake come up with something that is logical and do not make stupid comments like that that degrade our very fine police force who, from my experience of them, going back decades, exercise discretions exceptionally well.

I worked fairly closely with them over a nine-year period as a prosecutor and also on two occasions as a defence counsel and invariably I found them capable of exercising discretions quite properly. You do yourselves no service at all by using silly examples like that.

I come back now to the point I am making in relation to the substantive issue. On my advice there is no need for Mr Stanhope's amendment. When you look at the whole section I think you can see quite clearly why. There are provisions there, but there are also absolute checks and balances and things a police officer has to do, and the prosecution has to prove that the police officer did them to enable the swab to be taken.

Debate interrupted.

Planning and Urban Services—Standing Committee

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

> That so much of standing order 229 be suspended this day as would prevent the Standing Committee on Planning and Urban Services meeting whilst the Assembly is meeting.

Justice and Community Safety Amendment Bill 2000 (No 2)
Detail stage

Debate resumed.

MR STANHOPE (Leader of the Opposition) (5.35): Mr Speaker, I guess we often express amazement in this place but I am genuinely bemused that the government will not cop this amendment. I cannot believe that they are prepared to dig themselves into a ditch on this and for the Attorney to be embarrassed in the way he has just embarrassed himself in order to protect the Chief Minister's dignity.

The government is wrong. There is a mistake in the bill. I am sure it was accidental. I would love to see the drafting instruction which said, "Please omit the word 'serious' from section 29 of this act." You might care to table that drafting instruction, Mr Attorney. Table the drafting instruction to the OPC to remove the word "serious" from section 29. Table the drafting instruction which asks the draftsman to differentiate section 29 from sections 23 and 34, and provide us with an explanation of why the government wanted to differentiate section 29 from section 23 and section 34.

Why is it that the government wants a different formulation in section 29 than the formulation that appears in sections 23 and 34? On what basis did the government instruct the parliamentary draftsman to differentiate section 29 from sections 23 and 34? Why did the government want to not include the word "serious" in section 29 but insist that it be included in sections 23 and 34? What was the basis of that instruction to the draftsman? And what is the practical difference in the mind of the government as a result of its insistence? What is the practical difference, Attorney? Explain that here and now. What is the practical difference in the operation of section 29 as opposed to sections 23 and 34?

I will tell you what the practical difference is, Attorney, and there is a practical difference. Sections 23 and 34 apply exclusively to serious offences and section 29 applies to any offences. That is the practical difference. I would like to know why, Attorney. If that is not what the practical difference is, tell me what it is. There must be a difference. You know the golden rules of interpretation, Mr Stefaniak. I was there with you when we both studied them. I remember them all.

Mr Stefaniak: So you should. You had a bit of trouble with robbery, old son.

MR STANHOPE: You are wrong on that too, Attorney. Perhaps that's the point. You were wrong on robbery and armed robbery, and you are wrong on this. The fundamental rule of statutory interpretation, and I quote from Mr Craig Everson, senior counsel and experienced criminal barrister, is that plain words must be given their plain meaning.

It is significant that the word "serious" does not appear between "another" and "offence" in section 29. There is a ready contrast with sections 23 and 34 which both use the expression "another serious offence". Section 29 uses the expression "another offence". Sections 23 and 34 use the expression "another serious offence". The sections are different, and you know as well as I know, Attorney, that when you have two sections and one of them says "another offence" and the next section says "another serious offence", there is a marked difference in the meaning of the sections. Everybody knows that, Attorney. That is why I cannot believe the position you are taking.

I cannot believe that you would demean yourself in this way. I can only assume that your purpose is to protect the dignity of the Chief Minister who simply refused to accept this when he debated the bill last year. As Mr Craig Everson says, the words "another offence" mean just that. Mr Attorney, tell us the difference between the plain meaning of "another serious offence" and the plain meaning of the words "another offence". "Another serious offence" means that; it means another serious offence. A serious offence is defined; it is an indictable offence.

Section 29 says "another offence"; not "another serious offence", just "another offence". What does Mr Craig Everson say about that? The words "another offence" mean just that—any other offence. As Mr Everson says, and as every lawyer in this room knows, and I think, Attorney, as every other person in this room knows, there is no basis for reading the word "serious" where it does not appear. You cannot just conjure it up and say, "Oh, I think they meant to bung the word 'serious' in there; let's assume they did.:

Mr Everson actually heads this advice with a couple of quotes, Mr Attorney, and you should look at and actually reflect on these quotes. This is one of them:

> However ridiculous and unjust the results of the … Act may be, and this one produces peculiarly ridiculous and unjust results, it has been enacted by Parliament and it is our duty to enforce it.

That is what you have done, Attorney. The other quote says:

> If the words of an Act are clear, you must follow them, even though they lead to manifest absurdity. The court has nothing to do with the question whether the legislation has committed an absurdity.

I repeat:

> The court has nothing to do with the question whether the legislation has committed an absurdity.

Read Mr Everson's advice. It sets out succinctly the points that I make. It makes it quite clear that, having accidentally omitted to use the word "serious", you cannot suddenly conjure it up as if it is there and pretend that when you have two sections dealing with the same subject and they are using a different formulation they mean the same thing. They manifestly don't. You know, Attorney, under all rules of statutory interpretation, that if you have two sections and one says one thing and the next section says something else, if it omits a single word, then the interpretation must be that it means something else. It has to mean something else, otherwise why use the word "serious" in the first place. So it must have a different meaning.

As for the example we use, I do not apologise for it. It is an example which Mr Everson has said is appropriate in the circumstances. It is an extreme example. I am entitled to use an extreme example to highlight the fact that this government made a promise when it introduced this legislation that there was not a single circumstance in which any person suspected of anything other than a serious offence could possibly be subjected to a DNA test. That was the undertaking, publicly and in this place, and this is the nub of the issue: that if you were not suspected of a serious offence you could not be DNA tested.

This legislation has not kept faith with the government's promise. The government has not delivered what it promised. If you commit a minor offence there are circumstances in which you can be tested, and that is not consistent with the promise which the Chief Minister made—that under no circumstances could you be so tested. You can.

MR KAINE (5.43): Mr Speaker, this has been a stimulating debate between the two learned counsel. It is clearly a serious matter and, on the weight of evidence, I am ruling in favour of the Leader of the Opposition.

MR STEFANIAK (Minister for Education and Attorney-General) (5.44): I might be able to assist there, Mr Speaker. I spoke—

MR SPEAKER: Gentlemen, I am aware, and you should be aware, that this is not a dialogue between two people. We must move on, unless we are prepared to sit late tonight.

MR STEFANIAK: I mentioned earlier, Mr Speaker, that Mr Stanhope's amendment really does not affect the legislation one way or the other. Rather than go round in circles, the government is quite prepared on that basis to put in his amendment because it is not going to affect it one way or the other. I would point out to him—

Mr Stanhope: What an ungracious concession.

MR STEFANIAK: That's all right. I refer him to his own counsel's opinion, especially the last paragraph on page 1 and the first paragraph on page 2. He should read that, and he should also read the whole section. But at the end of the day, Mr Speaker, it does not

affect it one way or the other if his amendment goes in. We will accept that because it does not cause my officers any concern one way or the other. So, congratulations, Mr Stanhope, your amendment will get up.

MS TUCKER (5.45): This has been an interesting debate. I am glad that Mr Stefaniak has agreed. I was really concerned that we might see this amendment go down just because of a stubborn response from Mr Stefaniak. He did not produce any argument to counter effectively what Mr Stanhope brought to the chamber in this debate.

I think it is really important that everybody participate in debate in this place and take it seriously because what we decide in this place, as Mr Stanhope pointed out, has grave implications for how the courts operate. I am really concerned that time and time again I do not hear Mr Osborne and Mr Rugendyke even speak to how they vote, and they vote with the government and the government doesn't get it right. They did not get it right then, and finally he has conceded.

Amendment agreed to.

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

Bill, as amended, agreed to.

Planning and Urban Services—Standing Committee
Witnesses

MR HIRD (5.46): I seek leave to move a motion.

Leave granted.

MR HIRD: I move:

> That this Assembly orders that witnesses appearing before the Standing Committee on Planning and Urban Services' inquiries into draft variations No 163 and 158 to the Territory Plan may be represented by counsel or advisers.

Ms Tucker: I would like to know what this is about before I am asked to vote. Can someone talk on it?

MR HIRD: Briefly, Mr Speaker, this was brought about by the fact that the Acting Clerk brought to my attention as the chairman of that standing committee that under standing order 246 a witness cannot be represented by counsel or advisers. As to who was or was not a witness was in dispute.

MR SPEAKER: Order! Read the whole thing, please, Mr Hird.

MR HIRD: Under the heading "Witnesses' right to advice", standing order 246 says:

> Witnesses before a committee may not be represented by counsel or advisers unless ordered by the Assembly, but a witness may consult with counsel or advisers while giving evidence.

MR SPEAKER: Thank you.

MR HIRD: We are asking the Assembly to order that. Is there any more? No? She has gone!

MR SPEAKER: You are asking the Assembly to give the committee the approval that standing order 246 requires. Is that correct?

MR HIRD: Yes, that is correct, Mr Speaker.

MR SPEAKER: Thank you. Do members understand what we are talking about here? Thank you.

Question resolved in the affirmative.

Order of the day—postponement

MR BERRY (5.50): Mr Speaker, I seek leave to move that so much of standing orders be suspended as would prevent me from moving a motion to reverse the order of orders of the day 3 and 4.

Leave granted.

MR BERRY: Thank you. I move:

> That order of the day No 3, Executive business, relating to the Court Security Bill 2000 be postponed until after consideration of order of the day No 4, Executive business.

Question resolved in the affirmative.

Electronic Transactions Bill 2000

Debate resumed from 18 October 2000, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (5.51): Just by way of explanation, Mr Speaker, the Labor Party is happy to support this bill, whereas we had anticipated a debate on the Court Security Bill. I understand there is some suggestion that we might be rising shortly. I think this is a matter that can be dealt with quite quickly.

Mr Stefaniak: Yes, it can be. This is sensible.

MR STANHOPE: The then Attorney-General introduced this bill on 18 October 2000. In his introductory speech the Attorney said that the bill adopts a minimalist approach, yet the bill is comprehensive in ensuring that all electronic transactions are valid in law if the bill is complied with.

This bill is model legislation that is to be adopted in all jurisdictions. It very closely follows the Commonwealth Electronic Transactions Act 1999, which adopted most of the United Nations Model Law on Electronic Commerce 1996. The bill assumes that access to and use of the Internet and other computer-based systems is widespread and that it is desirable to transact business using those systems. That may be so in government circles and for medium to large businesses, but I wonder what is really happening in the small business. Do our perceptions, folk lore and IT industry publicly match reality? Do small businesses, including some sole practitioners in the professions, have the time and expertise to wrestle with the Internet or are they too busy staying afloat? However, these questions are really rhetoric because the ACT, like other jurisdictions, must place itself in the best competitive position to take advantage of all opportunities created by the increasing penetration and convergence of technologies in the broadcasting, communications, information technology and media industries.

I am happy to say that the Labor Party is committed to a regulatory environment which encourages the development of new services and new industries for the benefit of Canberrans, and therefore we will support the bill. However, we have to be mindful that there are people in the community who, whether through age, infirmity, poverty or religious conviction, cannot or will not use computers or the Internet to transact business. I would hope that all parties keep these people in mind when designing business regulations in order to ensure that these groups are not forced to use technology they either do not have access to or have a genuine conscientious objection to.

In that regard, Mr Speaker, it has been brought to my attention that members of the Brethren Religion, for example, do have some conscientious issues around the use of some technology, and I acknowledge the presence of a member of that organisation in the chamber today. I believe it is important for parliaments always to be mindful, in the consideration of all legislation, including that involving new technology, that there are people within the community with a range of views, including certain conscientious views, about the use of that technology.

MR STEFANIAK (Minister for Education and Attorney-General) (5.54): I thank Mr Stanhope for his comments. I think Mr Myall is in the Assembly. I thank Mr Hird also for bringing Mr Myall's concerns to our attention. I think the government can reassure Mr Myall and anyone else who might have some concerns about having to use this bill. Mr Myall, and I think a number of other people, might have been concerned about a provision in the bill that may lead to the belief that people would be required to use computers or the Internet in dealings with government. I assure Mr Myall and anyone else who is concerned about that that there is nothing in this bill that mandates the use of technology.

The effect of clause 8 (3) in the bill merely makes it clear that the bill does not affect the operation of any other ACT law that specifies the way in which electronic communications must be made. For example, it would not affect any existing ACT information technology software requirements. Clause 8 is an expression of the fundamental principle of media neutrality whereby the law should not discriminate between different forms of software technology, and I think it is important that that is drawn to people's attention.

I thank Mr Myall for his concern and for bringing that to our attention. There are a lot of people in our community who would not want to use technology in dealings with government and things like paying bills, et cetera. I fully respect their views. In fact, I like to pay my transactions and conduct them in person anyway, so maybe I am just old-fashioned there. I need to get used to this modern technology.

Mr Stanhope: Hear, hear!

MR STEFANIAK: Jon Stanhope says, "Hear, hear!" I can certainly appreciate people's views there, as I am not dissimilar myself. I thank members for their comments. I thank Mr Myall for his concerns and acknowledge his presence in the gallery. I commend the bill to the assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Adjournment

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

> That the Assembly do now adjourn.

Assembly adjourned at 5.56 pm until Tuesday, 27 February, at 10.30 am

Schedules of amendments

Schedule 1

CRIMES AMENDMENT BILL 2000 (NO 3)

Amendments circulated by the Leader of the Oppositio

1

Schedule 1

Amendment 1.3

Page 5, line 10—

After "**Territory**," insert "**offensive weapon**,".

2

Schedule 1

Amendment 1.14

Proposed new definitions

Page 7, line 13—

Insert the following new definitions:

dangerous weapon means—

(a) a firearm under the *Firearms Act 1996*; or

(b) a prohibited weapon under the *Prohibited Weapons Act 1996*; or

(c) any other spear gun.

offensive weapon means—

(a) a dangerous weapon; or

(b) anything that is made or adapted for offensive purposes; or

(c) anything that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm.

Schedule 2

JUSTICE AND COMMUNITY SAFETY AMENDMENT BILL 2000 (NO 3)

Amendment circulated by the Leader of the Opposition

1
Schedule 1
Proposed amendment of the *Crimes (Forensic Procedures) Act 2000*
Proposed new amendment 1.5A
Page 9, line 16—

Before amendment 1.6, insert the following new amendment:

[1.5A] Section 29 (1) (b) (ii) and (iii)

omit

another offence

substitute

another serious offence

Answers to questions

Police conversations with motorists—recording

(Question No 316)

Mr Stanhope asked the Attorney-General, upon notice, on 28 November 2000:

In relation to Australian Federal Police (AFP) procedures for recording conversations with motorists:

1. When did the AFP introduce the procedure of recording conversations with motorists stopped for questioning about alleged traffic offences.

2. Are these conversations recorded on:
   (a) video;
   (b) audio tape; or
   (c) both.

3. What becomes of the recorded conversation.

4. Did the AFP seek advice from the Privacy Commissioner before instituting this procedure.

5. If so, what advice did the Privacy Commissioner give.

6. What procedures have the AFP instituted to ensure motorists are warned that the conversation is being recorded and that the Information Privacy principles are not being breached:

7. Were the public notified of the new procedures and, if so, when.

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

1. The AFP has not implemented any procedure for recording conversations with motorists regarding alleged traffic offences. However, some members of the AFP have been recording conversations with motorist for approximately the past three years. These members are generally motorcyclists who, operating alone and uncorroborated by another member of the AFP, have adopted this procedure to protect themselves against possibly vexatious complaints from motorists.

Section 4 (3)(b)(i) of the Listening Devices Act 1992 (the Act) allows for the recording of a conversation between two or more parties as long as a principal party believes it necessary on reasonable grounds to protect their lawful interests.

2. These conversations are recorded on micro audiocassette format only.

3. In instances where members use the tape as part of their statement preparation, the member should lodge/or archive the original tape along with other records made by the member, for ease of retrieval at a later time if required. However, there have been instances where this procedure has not been followed and steps have been taken to remedy this at a training level.

4&5 Since there is no formal procedure in place, the AFP did not seek any advice from the Privacy Commissioner.

6. Some individual officers do make the driver or occupant of the vehicle aware as a matter of courtesy. However, there is no requirement under the Act for such a warning.

7. No. There has been no formal announcement made to the public on this issue, as there has been no firm policy developed in this area. Individual officers may choose to use tape recorders at their discretion and for the reasons outlined in response to part one of this question. There is no requirement under the Act to warn drivers of the use of such devices.

Gold Creek Homestead

(Question No 318)

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

In relation to the Gold Creek Homestead:

(1) What are the current and historical maintenance costs to Government of the Gold Creek Homestead for:
(a) all the years the building has been held in government ownership; or
(b) where the Government has contributed to the buildings up keep.

(2) What was the total cost to Government of re-acquiring the Homestead.

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

(1) The current and historical maintenance costs to Government of the Gold Creek Homestead are as follows:

(a) $1,645.92

(b) $3,400.00

(2) Planning and Land Management, on behalf of the Territory, paid $1,350,000.00 in settlement of a compensation claim for Gold Creek Homestead on 24 December 1997. In addition, waivers were granted for rent on the buffer lease (Block 1 Section 23 Ngunnawal) of $2,039.41 and rates for the two blocks of $2,456.36 (the buffer lease) and $2,154.64 (for the main property Block 354 Gungahlin) respectively.

Members and staff—travel expenses

(Question No 324)

Mr Hargreaves asked the Chief Minister, upon notice, on 13 February 2001:

1 Why Mr Latimer was paid only $122 for travelling allowance for 8 days in Brunei.
2. What was the total cost to the taxpayer for:
(a) accommodation; and
(b) other expenses not advised in the Quarterly report.
3. Why were additional costs not included in the report.
4. In what capacity did Mrs Helen Moore attend the
(a) Ministerial Council on Drug Strategy; and
(b) Meetings and conferences in Wellington between 24-29 July 2000.
5. Is it Government policy for Ministers to travel at taxpayer expense to attend sporting events such as Rugby League Grand Finals, Athletes Happy Hours and Gold Medal Football matches.

Mr Humphries: The answer to the member's question is as follows:

1. Mr Latimer was paid $122 cash for overnight accommodation in Brisbane on the return trip from Brunei.
2.
(a) The cost of Mr Latimer's accommodation in Brunei was $2,118.82. This, and joint dining expenses, were paid for on a corporate credit card issued to Mrs Carnell. Therefore the expense was reported against Mrs Carnell's name as combined expenditure. The Brunei Government paid for Mrs Carnell's accommodation.
(b) There were no other expenses not advised in the Quarterly Report
3. There were no additional costs to be included in the Quarterly Report apart from a $130 cancellation fee for each of the original discounted airfares booked. The cancellation fee appeared in the January Qantas monthly statement and will be reported on in the January-March Quarterly Travel Report.
4.
(a) Mrs Helen Moore accompanied the Minister for Health to the Ministerial Council on Drug Strategy in Perth in her capacity as ministerial adviser on drugs issues and public health issues.
(b) Mrs Moore also accompanied the Minister to Wellington for combined Ministerial Councils for Health, Food, and Disability Services (over 4 days) in her capacity as ministerial adviser on public health issues, with particular responsibility for food issues, notably genetically modified foods (before the Food Ministers Council) and antibodies issues (before the Health Ministers Council).
5. Mrs Carnell was invited to attend the NRL Rugby League Grand Final in her capacity as Chief Minister. Both the Athletes Happy Hour and Gold Medal Football Match were events held during the Sydney Olympics. Mrs Carnell was officially invited as Chief Minister to attend these functions which provided an opportunity to promote Canberra to national and international business people.