DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

1 March 2001

Thursday, 1 March 2001

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The Assembly met at 10.30 am.

(Quorum formed.)

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

Government Procurement Bill 2001

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

Title read by Clerk.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (10.31): I move:

> That this bill be agreed to in principle.

I present to the Assembly an important bill which is integral to the government's program of procurement reform in the ACT public service. The bill will create the Government Procurement Board, which will develop, implement and review policies and practices for the procurement of goods, services and works by territory entities.

One of the board's key responsibilities will be the establishment of a procurement accreditation system which will govern purchasing activities and ensure that only officers with accredited skills and competencies perform major procurement activities, in accordance with agreed procedures.

Through its advisory role to the government and government agencies, the board will ensure the ongoing improvement of procurement practices and purchasing skills in government agencies. The board will develop and issue procurement guidelines, and monitor the key purchasing activities of territory entities. Procurement guidelines will be issued as disallowable instruments under this legislation. The status of the guidelines, previously considered to be discretionary, will be enhanced by their issue as disallowable instruments with compliance mandated.

Initially, the board will focus on commercial procurement activities by the main government departments. Regulations will be developed at a later stage to extend the coverage to territory-owned corporations, statutory authorities and government business enterprises, as appropriate. Similarly, service agreements with public organisations and non-profit organisations may be covered by guidelines issued by the board at a later stage.

Importantly, the board's central functions will not detract from the accountability of chief executives. The board will set the overall and consistent standards for procurement activities and provide advice to chief executives, but will not have executive power to enter contracts, nor to prevent agencies from entering contracts.

Chief executives will be required to provide information to the board upon request and, to be fully effective, it is envisaged that the board will develop an information base to enable it to provide timely and strategic procurement advice to the government. For example, the board will provide strategic advice to position the territory to take full advantage of electronic commerce to maximise cost savings to the ACT.

It is proposed that all agencies will be required by procurement guidelines to submit details of their proposed procurement methodology on major projects, say above $1 million in value, before inviting tenders or expressions of interest. Similarly, the board will be providing advice at the planning stages of high-risk projects. Related to the board's responsibilities for accreditation of procurement skills, it will oversee the development of training courses for government officers, particularly the standards of training courses and their appropriateness to the ACT public service.

The recent report of the Select Committee on Government Contracts and Procurement Processes supported the creation of the board. Our investigations interstate indicated that in most Australian jurisdictions there is a similar board or commission charged with oversight of purchasing activities. This is particularly important in jurisdictions where financial accountability has been devolved to agencies. We have been able to identify and incorporate the best features of the interstate systems, while having regard to the scale and special circumstances in the territory.

The board will have seven members appointed by the Treasurer, four from government and three external to the public sector, with the chairperson from inside government. The appointment of members will be based on their experience and skills in areas relevant to the board's functions. Members will be selected to ensure an appropriate balance of skills, with particular emphasis on contract law, information technology procurement, probity and ethics, and general procurement experience. Appointments will be personal appointments, not as representatives of particular organisations or interests. Board member sitting fees will be determined by the Remuneration Tribunal, in common with other ACT government boards.

Mr Speaker, in conclusion, I believe the establishment of the procurement board is an important step to ensure the ACT public sector adopts the best practices in procurement process and activities which are transparent, efficient and cost effective. I commend the bill to the Assembly.

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

Housing Assistance Act—instrument No 376 of 2000
Disallowance of provisions

MR WOOD (10.36): Mr Speaker, I move:

> That pursuant to the Subordinate Laws Act 1989, this Assembly disallows provisions 8, 10, 11, 13, 15 and 17 of Instrument No 376 of 2000, the variation to the Public Rental Housing Assistance Program made pursuant to the *Housing Assistance Act 1987*.

Mr Speaker, I will indicate very briefly what each of the provisions we propose to be deleted is about. We propose to delete provision 8 because it allows segmentation of the priority list. It details the fact that there will now be priority categories but does not detail the category definitions. Provision 10 is related to provision 8. Provision 11 should be deleted because it enhances the commissioner's discretion in refusing assistance. Provision 13 relates to the eligibility review and we are most concerned about the loss of security of tenure attached to that. Provision 15 is proposed to be deleted because it raises contributions from residents other than the tenant in a house from 10 to 25 per cent. Provision 17 should be deleted because it allows the commissioner to force transfers due to changes in household composition.

There is quite a long history to this debate. These measures were first proposed by the government in the 1999-2000 budget and they have been resisted by quite a large number of people since that time. But the minister, as he is entitled to do by instrument, has now sought finally to implement the policies the government proposed all that time ago. But the procedures of this Assembly, the right given to this Assembly, are that we have the final say and there will be the final say today. Therefore, it is a matter of considerable importance to all members of the Assembly.

Mr Speaker, when I first looked at this instrument my immediate inclination was to disallow all of it and to ask the government to bring in an entirely new instrument. Various subtle changes have been made to the wording which give the commissioner more discretionary power than he or she has ever had before. For example, the old definition of "assets" has been removed and the new definition states:

> "Assets" means all assets owned by the person including those in which the person has a contingent or beneficial interest but does not include any assets of a kind which the commissioner has determined should be disregarded for the purposes of this program.

What are they? They used to be defined in the program as clothes, household equipment, tools of trade and so on; but who knows what they are now? There are more examples of that nature, yet this is supposed to be the definitive statement of the public rental housing assistance program. Not only that but the minister, when he brought down his response to the report of the select committee that had been established, indicated initially that he was agreeing with much of it. Of course, when you read it, that was not the case. If this Assembly disallowed the whole instrument, it would be ignoring the few beneficial changes, such as the raising of the assets limit from $20,000 to $40,000, so it is better to concentrate on those items of major concern.

Labor believes that, through its changes to ACT housing policy, the Liberal-Moore government is now targeting the very people it should be helping. Since the 1999 budget, tenants have felt under threat. Policy changes announced then caused a strong reaction. I know; I received many calls. As a consequence of my concern and the concern of Kerrie Tucker and other members of this Assembly, a select committee was established and looked very exhaustively at all the issues.

The select committee reported in March 2000 and it recommended against most changes. The government's response was not received until December 2000, nine months after the committee had reported on all its research and consultation. By then the tenants had had 18 months of uncertainty. That was followed by a change in minister. Mr Moore became

minister in December 2000. I concede to him that he was given carriage of these changes with very little notice or prior explanation.

Although the government's response to the select committee indicated that it agreed in principle—in principle—with 12 recommendations and agreed in part with one, we found out when we read the fine print that several important recommendations had been completely disregarded. In fact, the government ignored the committee's recommendations and the policy changes which had first been proposed in 1999 came into effect on 1 January this year.

A major change made by the government affects security of tenure. Tenants who sign leases after 1 January this year will have periodic reviews at three or five years. If they no longer meet the eligibility criteria, they will have to vacate. Evidence given to the select committee by several people, including departmental officials, showed that the higher rent paid by people on higher incomes, who will now be evicted, was important to the ACT's budget. That is just one aspect of it.

Let me say that I recognise that there is some logic in the government's proposal here. The government argues that public housing should be available to those most in need and that, if you are above the financial eligibility criteria, you should not hold a house that may be available to somebody else. There is some logic in that; I recognise that. But I believe that the stronger argument, the one which has to be taken into account at the end of the day, is that security of tenure is important. The importance of the financial income to Housing is just one reason, but it is much more important that people be able to see their house as their home.

People should know when they move into a house that they are going to be able to stay in that house. That, surely, is the strongest possible encouragement to people to care for that house, to nurture it, to treat it as their own, to turn it into their home. I think that is the strongest reason for maintaining security of tenure: it is their home.

Take another case. In these days particularly people move into and out of jobs and employment, employment conditions change from full time to part time, and a large number of people cannot be sure one year what their income will be the next year. One year they may be eligible for public housing, but in a subsequent year they may fall outside the eligibility criteria, which could mean that they would have to move into and out of public housing. That, it seems to me, is not the best way to go. So many people lack strong security these days that they need the security of that home. Clearly, on balance, security of tenure is important for people and I believe, and I hope that this Assembly believes, that they should have it.

Another one of the provisions that we wish to change, to knock out, is the one that residents of a public housing property who are not the tenants—relatives, usually; children or others—are now required to pay 25 per cent of their income towards the rent, an increase from 10 per cent. In many circumstances, that is justified. I understand that the minister is going to make some changes today as he responds in this debate which may overcome some of the problems that were not recognised at the time.

But a significant number of the residents of such houses are young people on very low incomes, perhaps on youth allowances, who would find that taking 25 per cent of their small income is really a severe imposition upon them. I think the evidence shows that not enough consideration has been given to the ramifications of some of these provisions. To go back a step, for example, the committee wanted the government—the minister at the time—to look at the implications of people having to move from their tenancy by virtue of changed eligibility. That was not done. I do not think the government understands or acknowledges some of the problems that it may create. At least in this circumstance of an increase from 10 to 25 per cent of income, the response from the community has been such that the government has been forced to recognise some aspects of that.

On another matter, the waiting list is now segmented, something peak housing groups have argued strongly against. The most alarming part of this change is that, again, the discretionary powers of the commissioner have been increased. New provision 6 states that the commissioner shall determine priority categories for the purpose of this program having regard to the relevant need of applicants. What are those categories, which criteria are used to determine them, and why is the process no longer a transparent process?

A final concern is the issue of transfers. Tenants who have a change in the composition of their family—for example, an older couple whose children have left home—may now be required by the commissioner to transfer. In many circumstances, tenants may welcome that; they may wish to move from a house with a large yard to a townhouse with a small garden. Indeed, they may apply for that. I know of many circumstances where Housing has facilitated such a change. Again, I do not believe that this should happen. A house is a home. It is their home and they should not be forced to be transferred. I say again that that house is their home. Whilst the tenants should be offered that alternative and allowed that alternative, they should not be forced to accept that option.

In general, I do not think that some of these measures are beneficial to people whose homes are public houses and I would urge the Assembly to exercise its right and disallow the provisions I have indicated.

MR MOORE (Minister for Health, Housing and Community Services) (10.49): I rise to oppose most of what Mr Wood has moved in his disallowance motion. Mr Speaker, it is very easy to take the approach of doing nothing, of not making any changes and making sure that everything just goes along in the same way, which means that those people who are worse off now will remain worse off and those who are better off will remain better off but they will not notice the difference, so it will not cause any particular problems. I must say that that was generally the approach that the Labor Party used when they were in power.

Mr Speaker, it is much more difficult to look at it and say, "Yes, there are some problems occurring here and it is incumbent upon us as the government to try to deal with those problems." When these issues were discussed in an almost identical debate and were resolved in the opposite way to the one that Mr Wood would like today, I pointed out that I had been advised that to deliver the sort of result which Mr Wood wants and which, I have to say, I would like to have where people would have permanency of tenure would cost us in the order of $300 million.

We are going through the draft budget process at the moment. It would cost us in the order of $300 million to allow people to have security of tenure and to meet the needs of the people on the waiting list at the moment who also need to have public housing, because we would need to expand our assets to that extent to meet that need. The context in which I mean it is in one-off money terms.

The government, in looking at the expenditure of that kind of money, would say, "Where is the greatest need and where are we going to apply that money in order to deal with those in greatest need?" Mr Speaker, we have gone through this whole process to enable us to say whether we want to leave it with the status quo or whether we want to make sure that we can deal with those in greatest need. That is the approach that we have taken.

Mr Speaker, I have not been bloody-minded in the way that I have approached this issue. Mr Wood raised this issue and a number of other issues with regard to the package that the government had put together to try to improve the lot of those in greatest need. The committee responded on that and the government has agreed with some of the things from the committee, but has not agreed in whole. However, there was one issue that was quite significant to us. It was the impact that comes from provision 15, which Mr Wood proposes simply to disallow. I have prepared an amendment, which has been circulated, which recognises actually what it was that Mr Wood was trying to achieve there, I think it is fair to say; that is, what impact does it have on a family which is receiving a rental rebate because of the low income of the family when their 16 or 17-year-old son gets an apprenticeship, he has his first regular money coming in, and mum has to say, "Sorry, son, we will have to take some of that money."

Clearly, that was not an effective way of maintaining and keeping a family together, so I was not bloody-minded. I looked at each of the things raised to see whether we could do something about it. I have circulated two amendments and I take this opportunity to seek leave to move the amendments circulated in my name.

Leave granted.

MR MOORE: I move:

(1) Omit all the words after "Assembly", substitute the following:

"amends clause 15 of Instrument No 376 of 2000, the variation to the Public Rental Housing Assistance Program made pursuant to the *Housing Assistance Act 1987*, by deleting the definition at clause 17 (5) therein contained, and substituting the following:

(5) For the purpose of this clause 17, "Basic Rent" means the sum of:

(a) 25% of the weekly income of the household, other than

(i) the weekly income of all members of the household that are less than 18 years of age other than the tenant; and

(ii) dependent child payments;

(b) 10% of the weekly income of all members of the household that are independent persons less than 18 years of age other than the tenant, other than dependent child payments;

(c) 10% of dependent child payments payable to any person in the household; and

(d) any component of the rent for the Property which is in respect of hot water, space heating, garages and other facilities and is specified by the Commissioner to form part of the basic rent.".

(2) Insert at the end to the Motion the following:

"(2) This amendment takes effect as of the date of operation of Instrument No 376 of 2000.".

Mr Speaker, the first amendment means that in the sort of family that we are talking about the income of that 16 or 17-year-old will not be taken into account, that mum will not have to say, "I am taking your money away," and the kid will say, "Blow you, I am going to go and get a house of my own or live elsewhere." We did not want to achieve that, so we did recognise that.

Members will notice that the second amendment says that the amendment takes effect from the date of operation of the instrument. The Assembly is always very careful about backdating things when it disadvantages somebody, but this is to the advantage of the eight families that we knew it had affected so far. It says that we should not have applied that at that time and we will therefore repay the people who had put in money, if any have. Certainly, it will not apply to them for the interim period. I think most members would agree that that is a worthwhile exercise.

It is worth pointing out, though, that my amendments seek to oppose what Mr Wood has put up. Mr Wood is putting up something that I think is worth putting up as a goal for us to seek to reach, but it is a question of priorities and the difficulty for government is always in assessing priorities and delivering on those priorities. In the end, if we are going to deal with our waiting lists in the way that we have to, if we are going to be equitable in dealing with those of greatest need within the money that I have, then what the government has put up is the most effective way of doing it. For us to deliver what Mr Wood is suggesting we ought to deliver, the bill would be in the order of $300 million in capital to increase the asset in housing.

I emphasise, Mr Speaker, that our whole focus in this exercise has been on dealing with those in greatest need but, at the same time, we have maintained the rights of tenants who perceive the homes in which they live as their own homes. We have not taken away that prerogative. We have said that, starting in the future, the position of somebody who has been there for three years, or five years if a pensioner, will be reviewed and if they have the wherewithal to move into either private rental or their own homes, we will provide assistance under the first home owners scheme—quite significant assistance, I might add. What will happen is that their rental will end because that house can be used for somebody who is in greater need.

That is not something that I come to easily. As I argued last year in the Assembly, members can go through the *Hansards* sitting in front of me and they will find that on many occasions I argued the difference between welfare housing and public housing, but

I still have to manage within the money I have before me. If you genuinely believe that we want a system of public housing, you also have to look at the budget ramifications of that for us.

If there comes from the budget process a recommendation that we should increase capital funding of public housing to meet the needs of the people on the waiting list, there may be an opportunity to review this policy, should the government accept it. If we do not, I suggest that the Labor Party put it in its policy and say that it will commit $300 million of capital money to public housing so that there can be an outcome of the type that Mr Wood effectively is advocating in this disallowance motion.

Mr Speaker, I encourage members to maintain the approach that they took before Christmas and vote against Mr Wood's disallowance motion, but recognise that the amendments that I have put up do at least make a concession about the concerns that Mr Wood and Ms Tucker have raised with regard to families. Just as I distributed the amendments in my name, the Clerk raised with me a question as to whether they are valid. We have had legal advice that they are, but he has raised an appropriate question.

Should it be the case be that the amendments are not valid, I still have the ability to write another instrument and make sure that the same thing is still carried through. It is my advice that the amendments are valid and we should proceed with them. If not, they will not affect the motion here and the matter can be revisited when I gazette it and it comes through the Assembly again. I thought in the spirit of openness that I would make it clear that that was the case.

I am still confident enough to have moved that amendments to Mr Wood's motion and I would encourage members to support my amendments. It is worth pointing out that my amendments remove all the other clauses that Mr Wood has put up for disallowance. The only thing that would change under my amendments is that we would not apply this rule to the 16 or 17-year-olds who are living in their own homes.

MS TUCKER (11.00): I was interested to see in the *Canberra Times* of Sunday, 18 February a little article by Graham Downie on housing. I was particularly concerned to read about Mr Hutchison talking in an interview about how tenants are now on notice that a culture of tolerance which has existed is not going to continue. I quote:

> That tolerance which crept into our culture has to be reversed.

He talks about there being more support, but that the way housing has dealt with people with a poor rental history has meant that there is an arrears of about $1.2 million. What concerned me was this quote:

> The concern that, "where will these people go if we evict them, had led in the past to an unacceptable level of tolerance of poor behaviour. It has impacted unfairly on all our good tenants who do the right thing—who pay the rent and look after our properties."…Asked where evicted people might find accommodation, he said, "There are 3000 people on the waiting list and they are all living somewhere. They are our new potential clients." But the rental market generally was tight. "Therefore we emphasise to clients to make every effort to meet their obligations."

Okay, I am hearing that, Mr Hutchison, and I am assuming that the government feels that it has to change its approach to people with poor rental records. What came out of the select committee's inquiry that interested me was that there was a very broad and consistent concern from the sector about what will happen to people if they are not given public housing, especially people who are going to be disadvantaged in the private rental market.

Mr Hutchison seems to be thinking that if other people move into public housing, the people who have been evicted will be able to find accommodation in the private rental market. I am sorry, I do not think that that is what would happen. Mr Hutchison has remarked that the private rental market is very tight. We know that it is; we were told that at the select committee's hearings. In fact, a property agent said to us, from recollection, that he thought that this year there would be a slack of even less than one per cent in the private market; so, what are we actually saying here?

What I think we are hearing is that we are going to see people who have public housing as housing of last resort being evicted and I do not believe that they will be able to find accommodation in the private rental market, so there is a real issue for our society as a result of that. Mr Moore has been critical of people in this place taking a do-nothing approach. I do not believe that the select committee did take a do-nothing approach. The select committee asked the government to do some work to support its particular position.

It was the concern of many in the community that the response from the Liberals to housing was an ideological one, consistent with those of conservative governments across Australia. The concern there was that it was not supported by any particular analysis in the ACT of whom it would impact upon. Also, we heard from the government that the average period of tenancy was about four years, so there was a turnover with people moving out. The committee was interested in ascertaining who were in the group that was staying and asked the government to do that work. I recall from the motion I put that the government did say that it would respond again. I do not believe we have seen that response; I do not have it, anyway.

Mr Wood has taken the opportunity today to raise the issues of concern. I support him in doing that and will be supporting the disallowance, because I do not believe that there has been enough work done that I can with confidence support the government's approach to public housing. Mr Moore says, and I have some sympathy with his situation, that he does not have money in his budget to do more than he is doing, so he has to target it to a very strict welfare housing category. Obviously, that is an issue.

Mr Moore: For those most in need.

MS TUCKER: Mr Moore corrects me, which raises an interesting point. We are not quite sure that that is what is happening with this approach. Mr Speaker, it appears from the quote I just read out of Mr Hutchison's that it is quite likely that those most in need are going to get evicted, so I do not think that the government is even achieving that aim. But the point is that this government, according to Mr Moore, is not able to support public housing to the degree that he would like. He has to work within a budget and he is doing that, which is fine as that is his job.

My job and the job of other members in this place is to make comment about whether this social service is being adequately accounted for by the government of the day. I do not believe that it is. The government claims that it cannot afford to spend an extra $300 million on housing. I am still waiting to see that figure unpacked. I thought I had asked for it before. I am interested in finding out where the government is coming from and how it arrived at that.

I know that the government has said on occasions that it is reducing its housing stock, so I guess that figure will be going up as we speak because it would be needing to build more and more houses or purchase more and more houses. But you have to see that cost balanced against the cost of not providing housing for people who are at risk of being further disadvantaged. We have now had from this government a recognition that we need to address poverty in this city through intervention and prevention. The government is looking at crisis services and a crisis response to poverty in the ACT. We are also hearing from the government that it understands and recognises that for the long-term benefit of society you have to look at the causes of poverty.

As we know, the poverty task force said that housing was a particular issue for the ACT, that it is a big problem for low-income people in the ACT who are experiencing poverty. That was said quite clearly by the task force. It is also well recognised that it is only from a position of safe and secure housing that you can actually address the other issues of poverty, which means that if you have safe and secure housing you can look at education, employment and other support needs that you may have. That is why people in the social services sector across all countries, not just Australia, recognise the fundamental and critical importance of housing.

The government has set a particular income level at which, after 18 months, people will be seen to be not needing public housing. If you look at the statistics produced in Australia over the last couple of years you will find an increase in the amount of casual work performed, casualisation of the work force. We know that that is having a very detrimental and disturbing effect on lots of people in this country. It has implications for people who want to borrow money. Banks are having to deal with that themselves in terms of finding ways of knowing that people will be able to pay back money that they borrow if they are doing casual work and do not have a secure income.

An obvious concern for people who do casual work is that they do not know whether they are going to keep their jobs because the very reason that employers like to employ people on a casual basis is that they can get rid of them easier when they do not have such a need for them. It may suit the profit margins of individual companies to do that, but it does not necessarily serve society as a whole. For that reason, people are going to be concerned about losing their safe and secure housing. The dilemma that was put to the committee by many in the sector was that people would have to make a choice between a job or a home, basically; that there would come the point where they would have to make a decision on whether they were prepared to give up their public house in the hope that they would be able to continue getting employment, even though they had no guarantee of it.

I am interested in Mr Moore's amendments today. He has acknowledged at least one problem with the government's approach, and that is to do with how much people who are sharing government houses pay. *(Extension of time granted.)* Under his amendments,

people who are less than 18 years of age will not have to pay 25 per cent of their weekly income in rent; they will only have to pay 10 per cent. That is an improvement, but it is not acknowledging the fundamental problem here.

This is not a problem just for young people. It is actually an issue about the status of someone who is sharing a house. They are contributing to the rent, but they are not the person renting the house. Saying that they have to pay the same amount because they are sharing a government house flies in the face of how any other sharing of a house would work in our society. You contribute to the rent; you do not see the rent increased according to the number of people living in the house.

For example, people who are living at home may well be creating support for each other in the house that is beneficial to, dare I say it, social capital in our community, yet they are now going to be getting charged basically the same rent. Not only will that cause difficulty for certain people, particularly adult children with disabilities or some kind of problem, but also people may well decide that they might as well just go and get their own house as they will be paying the same amount and you may find a greater demand on public housing as a result of that. I will be supporting the amendments but I think that they fall short of what the committee would have wanted.

I have already obtained an extension of time. I think I have covered all the issues several times previously, at least twice in this place, so I do not think that I will continue to go through them all again. I think the Greens' position here is on the record. I urge members to consider Mr Wood's disallowance motion very seriously, particularly Mr Rugendyke and Mr Osborne. I do not know whether Mr Osborne is here today, but I was surprised at their vote last time.

Mr Rugendyke, as I recall, was very insistent at the beginning that whatever happened was going to be okay as long as it did not impact on existing tenants, which was a bit of a strange reason anyway because you would want to have a just system for everybody. The fact that existing tenants are being exempted is going to make it less difficult politically for the government, but you would hope that any system the government implements would be for everybody.

It is quite obvious that existing tenants are going to be affected by this new approach to housing. We have already gone through that in this place. There will be several ways, several triggers, for existing tenants to fall under this new policy approach to public housing, so that that basic objection of Mr Rugendyke's has not been supported when we have looked in detail at how this new approach or these so-called reforms to public housing will affect people. I am sorry that this government, which does claim to have such an interest in social capital, poverty, et cetera, is still sticking to its position on this matter, except for this very minor amendment.

Mr Wood: Mr Speaker, I rise to a point of order. I am not sure that it is possible to move an amendment to this disallowance motion. Could you make a ruling on that?

MR SPEAKER: I have taken some advice on this matter. There is no point of order, but I would draw attention to the Subordinate Laws Act 1989, section 18, which reads:

> Notwithstanding subsections (7A) and (11), an amendment of a subordinate law, other than a regulation, rule or by-law made, or to be deemed to have been made, under this section is of no effect.

The question is not that this Assembly has to reject the amendment. The Assembly can accept or reject the amendment, as it wishes, but it is not out of order to have the amendment, Mr Wood. However, it may, under the subordinate law, be challenged somewhere else. That is the only advice that I can give you.

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, I seek leave to speak again, and I will address that matter as well.

Leave granted.

MR MOORE: Obviously, Mr Wood was caught up when I did address the matter while speaking. The Clerk did draw my attention to that. He had only just seen the amendments and drew my attention to that in case it was to cause a problem. In fact, I have already had legal advice to say that the relevant amendment is valid and is not likely to cause the problem raised by you, Mr Speaker. I have not had time to go through that legal advice in great detail.

I would propose, as I said before, that we still should pass this amendment. If I get further legal advice which says that it will have no effect, I will draw up a new instrument and repeat it, but in doing so I will draw up an instrument that backdates, as we have here, to 1 January to make sure that nobody is disadvantaged. As I pointed out, the Assembly is always reluctant to backdate anything that adversely affects somebody's rights. In this case, proactively, it actually assists the eight or so people involved that we know of so far. Therefore, we are prepared to do that.

Having dealt with the issues that Mr Wood raised, I rise primarily to deal with the issues that Ms Tucker raised. I think that what we heard from Ms Tucker was simply her broad philosophy about how you deal with poverty and other issues. She began by referring to an article in a Sunday newspaper in which Mr Hutchison was quoted as saying, to paraphrase, that we have to take a firmer stand in terms of people who have not paid their rent. Remember, we have a rebate that takes into account that these people have a very limited income and the figure is 25 per cent of their salary.

Ms Tucker, I have to emphasise that we do not provide free housing. We are not there to provide free housing. This system is not a free housing system, nor should it be a free housing system. There are other systems that are designed to support people in need. I have discussed with Mr Hutchison the matter of being firm. He is not saying that being firm means that if you have not paid your rent you will be booted out.

What we have to do is to make sure that we intervene very early when we are aware that somebody is not paying their rent and make sure that the housing manager of that area speaks to them and does the sorts of things that Housing already does, such as provide counselling and assistance. But in the end, if somebody is not prepared to use housing under the conditions that we provide it, we have to be firmer with them. Primarily, "firmer" means insisting that they pay their rental, taking into account the rebate of 25 per cent of their salary.

As soon as we are seen to be saying that it does not really matter whether they pay their rent, what will follow will be a case where other people in public housing will say, "They are not going to do anything about it anyway, so I am not going to pay my rent either," and we would not have the income to support the people who are in public housing. That would be the case, unless we decide as an Assembly that we want to provide free housing for people, and my understanding is that that is not the decision of the majority of the members of this Assembly. Until it is, the administration of housing has to be fair but firm, and that is a reasonable way of doing it.

We looked at the report of the select committee and we have taken into account what happens to people who lose their public housing. A decision on that is never taken in the slightest bit lightly, because invariably we would have to look after them in a refuge or somewhere else if we were not careful. Ms Tucker's general philosophy was one about having to remember about poverty and we are dealing with poverty. The most effective way of dealing with poverty is by ensuring that there is adequate employment.

Every social scientist who looks at poverty will always say that the first and most important issue in terms of poverty is dealing with employment. Indeed, the proud record of this government, which started when Mr Kaine was a member of the government, is one of an improvement in the unemployment situation in the ACT, so that we are now down below 5 per cent for unemployment. That is the most effective way of dealing with poverty.

Ms Tucker referred to the comments on housing of the poverty task force. I have read those comments very carefully and they do not support the approach taken by Mr Wood or Ms Tucker. They make some general comments, but they do not support the approach that Ms Tucker has taken. I think it is disingenuous for her or Mr Wood to use the poverty task force to say that that is what happened. They certainly raised it as an issue. They simply talk about the importance of public housing in terms of dealing with the issue of poverty. None of us would shy away from that; it is incredibly important. It is the very reason for this kind of approach, because we are addressing those who are most in need.

Mr Speaker, I have just two other things to address. The first one is the situation where there are extra people in a house. Ms Tucker put one side of the story—

It being 45 minutes after the commencement of Assembly business, the debate was interrupted; ordered that the time allotted to Assembly business be extended by 30 minutes.

MR MOORE Ms Tucker dealt with the situation where there are extra people in a house. One side of the argument is to say that these poor people are not managing, but there is a flip side to that and it is the side that is most important. It is that we have a situation where somebody in a public housing system is being asked to pay 25 per cent of their wage rather than the full rental and they have living with them somebody who might be on a $50,000, $60,000 or $70,000 wage and is contributing nothing.

Clearly, that is an inequitable situation. Until this approach was adopted, the system allowed that, and it was said that they need only put in 10 per cent. It is now equitable. Why is it equitable? It is equitable because when those people are paying their share of the costs and are paying market rental, that money can be used to assist other people in public housing.

That is the other side of the equation that Ms Tucker and Mr Wood seem to drop out of all the time. They want us to look after those who are in strife here and give them everything they want, but not to worry about the other side. We are not going to accept that, but that is what the disallowance motion would do. We have said that we are going to change the system to make sure that it focuses on those in greatest need, and that is what the change to the system does. The disallowance motion says, "No, look after those who are all right, thank you very much." Our system would not allow us to do that.

Ms Tucker's final point was that we are applying the limited tenure only to people in the future, not to those from the past, and that if you want to have a just system you have to apply it to everybody. Justice does not apply just in silos. We have long said that we do not take away people's rights and every time we sit here and look at legislation we always look at balancing the taking away of people's rights against something that they are going to get in the future. That is the distinction here and it is entirely appropriate for us to do that.

Mr Speaker, the approach that we have taken and that Mr Wood is trying to disallow is about helping those in greatest need, but managing it within the budget under which we operate. If members want to change the system, they also have to change the budget.

MR KAINE (11.24): Mr Speaker, I have to agree that the resolution of this issue is not easy. Mr Wood and Ms Tucker have taken a particular approach which I could argue is at one extreme of the possible courses of action and Mr Moore seems to be taking a view that is at the other extreme. The only thing that concerns me is that the government does not seem to be prepared to come to some compromise.

Mr Moore waves his amendments around and says that they are the government's answer. Mr Moore's amendments address only one of a number of aspects that Mr Wood's motion raises. What about all the others? Mr Moore argues that if they fix that they fix all the others. I do not see that at all.

I am a bit reluctant to accept Mr Wood's motion in its entirety but I can see the principle that he has adopted and that Ms Tucker has expounded, that is, that there is an element in our community, and it is well documented now, living in poverty. I am not convinced that Mr Moore's approach really deals with that problem. The government ignores that problem.

In fact, Mr Moore said in his part of the debate that the way to solve poverty is to make sure that there are plenty of jobs. This government has been in place for six years: where are all the jobs? How is it, if that is the solution to poverty, that this government has not yet solved the question of providing jobs for all? The answer is that it is not within the power of the government to do so. Making more jobs available is not the solution to poverty, Mr Speaker. I am not arguing that the government has not done anything about creating jobs; it has created lots of jobs over the last six years and the Commonwealth

has been beavering away assiduously on creating jobs. But that does not alter the fact that, jobs notwithstanding, there is a significant element of our community living in poverty.

Mr Moore's response to Mr Wood's proposal does not deal with that issue. I can understand his plea that he has to live within a budget, but the government has been making much of the fact lately that we have got ourselves into a budget surplus position. We have money to spend and the Chief Minister has been asking for proposals as to how some of this money might be spent. Here is a damn good case for spending some of it.

I have not heard Mr Moore come back and say, "Yes, we will take some of the government's surplus and apply it to this." He is applying a mechanical formula that leaves some people still at a disadvantage, and they are people who have no recourse. They have no alternatives open to them. In fact, I heard on the radio this morning—I think I did not mishear it—that the Commonwealth Grants Commission is going to give this government another $78 million next year. There seems to be money to burn. I do not know how come, because for 10 years we have been struggling to get ourselves out of a deficit budgeting situation, but all of a sudden the government has lots of money to spend. Let us have some of it spent where it is needed.

Mr Moore's proposal does ameliorate the situation somewhat. But, I repeat, it deals with only one of the many aspects, the many facets, raised in Mr Wood's motion. I want to know what the government is going to do about the rest of them, if the government is not going to accept the report of the select committee which was published a year ago. The very first recommendation, unequivocal, said, "The committee recommends that security of tenure for public housing tenants be maintained." The government is not doing anything to guarantee that; in fact it is doing the very opposite. It is removing security of tenure from many tenants in public housing. That appears to me to be the essence of what the government is proposing.

Mr Wood is attempting to prevent that. Mr Wood is attempting to ensure that some of the recommendations of our select committee of a year ago are, in fact, put into effect by the government and the government seems determined to resist these recommendations. I do no recall that any of them have been put into effect yet. Maybe I am wrong; maybe the government has done something. But we had a select committee, the select committee reported and Mr Wood is now trying to protect the interests of the least well-to-do in our community by disallowing certain elements of this determination and the government is resisting it without putting forward any alternative proposal as to how these people might be assisted.

I am in somewhat of a dilemma. I must say that I got hold of instrument No 376 and tried to make sense of it, but it is pretty hard to read. It is pretty hard to figure out just what on earth it does mean. Obviously, Mr Wood has done a pretty good job of analysis on it, because he knows what it means. Maybe he is closer to the problem than I am.

The government's response does not give me confidence that it is serious about addressing this problem, so I am in somewhat of a dilemma. I suspect that in some respects Mr Wood is going a little bit too far with this motion; but, on the other hand, the government has done nothing even to recognise the essential problems inherent in our present arrangements. In a way, no matter which way I vote on this issue, I am not going

to achieve very much for the people who need the assistance, the people Ms Tucker has been speaking for and the people Mr Wood has spoken for.

I do not think that those people are going to come out of it too well no matter which way I vote on the issue, because the government has no intent and has no goodwill in terms of satisfying the basic needs of these people. I would like to see Mr Moore responding more fully to the specific issues raised in Mr Wood's motion so that we can get a better feel for what is the government's overall position on this issue, rather than saying, "We haven't got any money; therefore, we can't address the problems of those living in poverty in our community. We are going to move in our public housing area to make it even more difficult for some of them."

That seems to be the government's intention, because it has not got any money in the budget. As I said earlier, there seems to be plenty of money about. It is just a question of the government determining that it will spend some of it. I would like to have some assurance from the minister that he will spend some of it addressing the problems inherent in the matter that Mr Wood has brought before us today.

MR WOOD (11.33): Mr Speaker, may I speak to the amendments without closing the debate?

MR SPEAKER: Yes, as long as you address your remarks specifically to the amendments.

MR WOOD: I understand the debating forms and I would close the debate, save, I understand, Ms Tucker is seeking to move an amendment and is taking some time to do that. Speaking specifically to the amendments, there is a concern that, in voting, members who may not have heard all the debate would think that Mr Moore has proposed, as he said, a consensus, that he is considering this matter and has come to a compromise.

Mr Moore: I was very specific in telling you that this actually removes all your concerns. I was very specific about that.

MR WOOD: No, it does not remove all my concerns; but, as Mr Kaine said, it relates to one, only one—

Mr Moore: My amendment removes all your disallowances.

MR WOOD: Yes, exactly, and I—

MR SPEAKER: Order, please! I do not want a debate across the table, thank you.

MR WOOD: Exactly, it knocks off the disallowances and makes a change to one element, just one element. Mr Kaine was well able to point out that it was just one element, but it does not fix necessarily all the likely ramifications of that one matter. Mr Moore said that it would ease the matter for a relatively small number of people who may be on youth allowance or the like, but that is not the only ramification that ought to be considered. What of the case, and I am sure that there are some there, of older

children, people well into adulthood, who may be on a disability pension and who may be living with aged parents who are perhaps on a pension themselves?

We already know, although not much attention is paid to it in some quarters, the problems that people on disability pensions often have in that they are on that benefit but, because of their disability, they are already suffering a great deal more expense, having to buy equipment, perhaps having to get someone to cut the lawn and having to pay for additional medication. If Mr Moore has not heard that being on a disability pension is expensive, I certainly have. There are the costs of modifications to wheelchairs and car and all sorts of things. We ought to give some consideration to the expenses of people on disability who are living with a prime tenant, if I can use that term. Further than that, I am concerned because this amendment will wipe out all the other concerns; it will wipe them all out.

I do not want members coming in here and being beguiled by Mr Moore when he says that he has compromised, because he has not compromised. In fact, Mr Moore is responding to sound arguments presented to him through members or directly from the community about the impact of this item. It is a response that is reasonable but not fully comprehended. I would still argue that that amendment ought to be rejected. I am prepared to see that other residents of a house pay 25 per cent where the income levels merit that; I think that is a reasonable proposal. But let us go back and do it properly. Let us not amend this legislation; let us knock it out today and then next week or next month Mr Moore can come back with a fully thought out proposal on this measure. That is what he ought to be able to do.

The select committee required of the government, made a recommendation to the government, that it do some more work. Mr Kaine referred to the need for additional work. When that committee reported quite some time ago, it sought for the government to come back and tell us the result of some of its work in the area of the impact on people who might be required to move on from their houses. The government chose not to do that work. We can see evidence of the problem created as a result of that.

Just in Mr Moore's amendment alone, the government has come back and said, "We have not seen all the ramifications of it; therefore, we have got some changes to make." I suggest that it is not just in this measure. In that other measure of being required to vacate premises, if the work had been done, if the government had been in a position accurately to be able to see what the impacts would be, I think it might have had a different attitude. I think that it might have been different and I think that the government would have made changes to that as well.

I say again for the benefit of members who have not heard all the debate that the effect of Mr Moore's amendments will be to wipe out this disallowance motion and just reinsert one small component of what we are talking about. If Ms Tucker has an amendment that might be able somehow to overcome that problem, I would be very happy to hear what she has to say. I am prepared to leave it to her.

MS TUCKER: Mr Speaker, I seek leave to speak again to Mr Moore's amendments.

Leave granted.

MS TUCKER: I am just having some amendments circulated. The first amendment seeks to change Mr Moore's proposed amendments in a way that would not negate the disallowance motion that Mr Wood has put today. My second amendment is consequential upon my amendment to Mr Moore's amendments getting up and is designed to fix up Mr Wood's motion. I hope that members are clear on what I am seeking to do. The reason I am doing it is that I see some benefit in Mr Moore's amendments, but I am very concerned about the whole direction of the government in this area of public housing. That is why I will be supporting Mr Wood's motion of disallowance. But I would prefer to be able to support Mr Moore's slight improvement on the government's very unacceptable position on public housing. I notice that Mr Rugendyke is here now, so I will sit down so that he can speak if he wants. If not, I will keep speaking.

Mr Moore: Have you circulated your amendments?

MS TUCKER: They are being circulated at this point in time. I did not realise what Mr Moore was doing, but it is hard to keep up with the various issues in the chamber. Apparently, Mr Moore did make quite clear that he wanted, through his amendments, to cancel out Mr Wood's motion. As I said, my amendments will deal with that problem and members will have the opportunity of supporting Mr Moore's amendments as well as Mr Wood's motion.

Mr Moore: Is that the thrust of your amendments?

MS TUCKER: Mr Moore, I am seeking to amend your amendments so that they do not disallow Mr Wood's motion. I understand that my amendments will be circulated in a moment.

I did not cover a few points in my initial speech. As Mr Rugendyke does not want to speak and Mr Osborne is not here, I will raise now a few more issues about why I am concerned about this whole approach to government housing.

Another of the problematic changes is the new clause 18, which allows the Commissioner for Housing to require a tenant to move if the commissioner decides that their dwelling is excess to their needs following a change in householder composition. The commissioner may require a tenant to move on this basis at any time after their first review and at any time that a tenant breaches in any way their tenancy agreement. Obviously, a vulnerability and a lack of stability will result from that.

There are questions about what is a breach. The clause does not refer to a serious breach; it refers to any breach. The pressure on people living together to continue to live together so that persons will not be left behind and forced to move into a new house is another issue. At least, tenants forced to move in this way will be exempt from the new regime introduced by this program variation.

When a transfer is requested because of extra children in the family, the old tenancy agreement will continue. However, the definition applies only to children of the tenant or his or her spouse. We hear time and again about extended family relationships, particularly among the indigenous community, and this definition is unduly narrow. Again, it seems not to have been thought through.

The changes include different conditions applying to applications for a simple transfer to a dwelling with fewer bedrooms. The transfer will be treated in the same way as a new applicant, ranked for priority, et cetera. We understand that tenants are now permitted to transfer to a dwelling with fewer bedrooms. In fact, they receive an advantage in that they are deemed to meet the eligibility criteria for assistance under clause 5 (3).

I understand that members now have a copy of my amendments and I leave it to them to respond to those amendments. I seek leave to move my amendments together.

Leave granted.

MS TUCKER: I move:

> (1) Omit the words "Omit all words after 'Assembly', substitute the following:" Substitute "After 'Program' in Mr Wood's original motion insert the following:".
> (2) Before "amend clause 15", insert "and".

Amendments negatived.

MR SPEAKER: The question now is that Mr Moore's amendments be agreed to.

Mr Wood: Could you spell out what that entails? I am not sure that Ms Tucker understands that we have passed by her vote.

MR SPEAKER: We have.

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, I seek leave to explain exactly what my amendments entail? I did do it, but I seek leave to do it again.

Leave granted.

MR MOORE: Mr Speaker, now that Ms Tucker's amendments have failed, the amendments that I have put up will have the effect of removing all of Mr Wood's disallowance motion. His disallowance motion would have no effect whatsoever, with one minor exception. That minor exception is to do with the 17 and 18-year-olds—the eight or so of them across Canberra—who will not have to contribute to the rental of their own homes. That is the effect of my amendments. Effectively, they reject Mr Wood's disallowance motion. Had Ms Tucker's amendments been passed, but they have now failed, she claims that they would have allowed Mr Wood's motion to stand and to include mine in it. I have to say that I find difficulty in reading that into them. That is probably part of the reason why they failed.

MR WOOD (11.48): Mr Speaker, may I close the debate now?

MR SPEAKER: You may.

MR WOOD: Mr Moore's assessment of how the amendments will work is quite accurate; I agree with that. Mr Moore's amendments will wipe out my disallowance motion, it is as simple as that, with the ramifications that I explained in one speech and in a bit of another one. Therefore, I oppose Mr Moore's amendments. I would seek that he come back on another day with a small change to one aspect of what I am arguing about, just one small change, but let us follow the principles established by the select committee in a unanimous report and agree with my disallowance motion. It is about going back to the principles of that select committee report. If members want to follow those principles, they should not support Mr Moore's amendments; they should say no to those amendments.

Question put:

> That **Mr Moore's** amendments be agreed to.

The Assembly voted—

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

Question so resolved in the affirmative.

Amendments agreed to.

Motion, as amended, agreed to.

MR SPEAKER: The time for Assembly business has expired.

Court Security Bill 2000
Detail stage

Clauses 1 to 4.

Debate resumed from 27 February 2001.

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

Legislation (Access and Operation) Bill 2000

[Cognate bill:
Legislation (Access and Operation) (Consequential Provisions) Bill 2000]

Debate resumed from 27 February 2001, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this bill concurrently with the Legislation (Access and Operation) (Consequential Provisions) Bill 2000? There being no objection, that course will be followed. I remind members that in debating executive business order of the day No 2 they may also address their remarks to executive business order of the day No 3.

MR RUGENDYKE (11.55): I will not speak long on this issue. I believe that it is a good move to have legislation circulated to the members of the public through the Internet. I support that principle, and obviously there are some amendments to refine that process. I will agree to this bill in principle and look at the amendments as they appear.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1.

MR STEFANIAK (Minister for Education and Attorney-General) (11.57): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 1 at page 523]*, and I also present a supplementary explanatory memorandum to that.

I think this particular amendment changes the name of the bill to the Legislation Bill. It proposes to change the name of the act when the remaining provisions of the Interpretation Act 1967 are incorporated into the act later this year. However, changing the name now would help to avoid confusion and remove the need to make a large number of consequential amendments.

Amendment agreed to.

Clause 1, as amended, agreed to.

Clauses 2 to 18, by leave, taken together and agreed to.

Clause 19.

MR STEFANIAK (Minister for Education and Attorney-General) (11.58): Mr Speaker, I ask for leave to move amendments Nos 2 and 3 circulated in my name together.

Leave granted.

MR STEFANIAK: Mr Speaker, I move amendments No 2 and 3 circulated in my name *[see schedule 1 at page 523]*.

Mr Speaker, amendment No 2 is a technical amendment to bring the language of clause 19 subsection (8) more closely into line with that of clause 116 (3). Under the bill, registrable instruments are not, strictly speaking, required to be notified, if you see clause 51. However, unless a registrable instrument is notified, it cannot commence—see clause 61—and is, therefore, unenforceable. Again, refer back to clause 50A.

Amendment No 3 is consequential on proposed clause 50A. It also relates to amendment 15 and the proposed revised clause 111, which is at amendment 25.

Amendments agreed to.

Clause 19, as amended, agreed to.

Clauses 20 to 30, by leave, taken together and agreed to.

Proposed new clauses 30A to 30H.

MR STEFANIAK (12.00): I now move amendment No 4 circulated in my name, which proposes new clauses 30A to 30H inclusive *[see schedule 1 at page 523]*.

This amendment re-enacts, with minor technical changes, the provisions about regulatory impact statements that were inserted into the Subordinate Laws Act of 1989 by the Subordinate Laws Amendment Act 2000. That act was passed by the Assembly late last year, after the presentation of this particular bill. The Subordinate Laws Act 1989 is proposed to be repealed by the Legislation (Access and Operation) (Consequential Provisions) Bill 2000.

Proposed new clauses 30A to 30H agreed to.

Clauses 31 to 35, by leave, taken together.

MR STANHOPE (Leader of the Opposition) (12.02): Mr Speaker, I move amendment No 4 circulated in my name *[see schedule 2 at page 538]*.

Mr Speaker, I did speak to these amendments when we debated the bill in principle. Just to reiterate the point briefly, I think this proposed amendment is quite reasonable. I think it is appropriate that in this particular piece of legislation we reconfirm our commitment to some notion of executive responsibility for the actions of the executive.

I think it is an important principle that, when the executive—that is, the cabinet—acts, it is quite clearly understood and signalled by all of us that an act of a member of the executive purporting to act as the executive is an action of the executive—not just one or two of the members of the executive but all of the members of the executive.

As members know, this particular amendment arose out of the decision by the government, the executive, the cabinet, to produce regulations in relation to abortion. In that particular instance, two members of the executive, carrying out an executive

function, namely the making of regulations, made regulations that were bitterly and publicly opposed by the responsible minister, a member of cabinet.

This is quite a clear breach of all notions of ministerial responsibility and of cabinet solidarity—a fundamental Westminster principle that when the cabinet acts, when the executive acts, it is clearly understood that it is acting as a unit. It is only in that way that a cabinet or an executive can be held accountable to the Assembly, to the legislature, and through the legislature to the people, for its actions.

That is the fundamental principle of notions of cabinet solidarity and ministerial responsibility. It is perhaps the only device by which an executive can be held responsible to a legislature. What measure of accountability can there be of an executive—that is, the government, the cabinet—if on particular issues the member is simply hived off and says, "Look, I'll accept responsibility for this decision, but I won't accept responsibility for that decision."

It actually dilutes and diffuses the possibility of an executive being held appropriately accountable if the members of the executive, the members of the cabinet, can simply pick and choose which particular items of government decision-making they are prepared to be responsible or accountable to the legislature of the people for, and then decide, "Well, you know, I didn't really like this very much; I'll adopt a public position. I'll appeal to my particular constituency in the electorate on this particular issue by saying 'Well, I'm a member of the cabinet, I'm a member of the executive, but I don't like this particular policy initiative, so I'll stand down from it'."

The Chief Minister, in responding to this particular amendment the other day, indicated that the difficulty with the approach that I am suggesting is that it simply renders impossible the taking of a position by a member of cabinet on a conscience issue. And of course we all acknowledge that there are a range of issues that are regarded, quite appropriately, as raising issues of conscience, and it is acknowledged and accepted that on those issues each member of this place should express their conscience position. And abortion, of course, is one of those.

But each of the parliaments in Australia, and each of the Westminster parliaments around the world, deals with this issue of conscience, and deals with it appropriately, and they deal with it without undermining notions of executive or cabinet solidarity. There is no other parliament that I know of that has dealt with the conscience issue, say, of abortion—we do not have to dwell on abortion in relation to this example, but they deal with it in the same way in relation to euthanasia—and it is dealt with in each of those other jurisdictions in Australia and around the world by not taking conscience issues to cabinet. You do not take a conscience issue to cabinet.

You do not take issues in relation to abortion law reform to cabinet. You do not take issues in relation to euthanasia law reform to cabinet. You deal with them as a private members matter, and each member of cabinet adopts a conscience position as a member of the legislature, outside of cabinet.

In no other parliament in Australia have issues in relation to conscience issues been taken to the cabinet and dealt with in the way that this government dealt with the last debate we had on abortion. I know of no other government that takes conscience issues

to cabinet, because it undermines those notions of cabinet solidarity, it undermines executive responsibility, and it undermines ministerial responsibility, which are fundamental principles.

So how do other jurisdictions deal with these difficult issues, issues involving matters of conscience? Each and every one of the Australian jurisdictions—and I think it is the same throughout the Westminster world—proceeds with them on the basis of private members business, which then allows each member of cabinet to deal with it as a matter of conscience. It does not involve the executive, it does not involve the cabinet, and the matter is dealt with appropriately without undermining those principles, which really do need to be defended and protected.

All of these fundamental principles, each of these conventions around the operations of parliaments, accountable government, good government, require the Westminster conventions to be maintained.

That debate is over; I do not wish to re-visit it, but I maintain my position that it was inappropriate for two members of the executive to introduce this matter into the cabinet by taking an executive decision to produce regulations, in face of the bitter opposition of the responsible minister, which led to the situation that we have government legislation, namely regulations, not private members business. The matter could have been dealt with at the time. These problems that I am highlighting would not have been faced if the matter had been dealt with as private members business, through a bill.

The difficulty with using regulations is that regulations require an action on the part of the executive. It requires two ministers to act in concert, reflecting an executive position, namely a decision of the government to introduce regulations. Private members business does not require that. So the argument that this amendment that I am proposing denies individual ministers the capacity to reflect a conscience position is simply not true. Conscience issues should not be dealt with through executive action.

There are two principles here that are competing: the need for cabinet and executive solidarity in order to ensure that cabinets, executives and governments are truly responsible to the legislature for each of their actions, and the competing principle that, on certain issues that have such significance as conscience issues, it is accepted that each member of the legislature should have the right, outside of the notions of solidarity and collective action, to express an individual point of view. They are the two principles that clash. They did clash in this particular instance, and it was a clash which could have and should have been avoided.

All I am suggesting is that we as a parliament need to be careful about protecting some of those notions that make the Western democracies as strong as they are, and we can do that simply by insisting that at least the responsible minister sign his own regulations along with one other minister. In that instance, it would have at least sent a signal to the executive that you cannot get around notions of cabinet solidarity simply by one minister absenting himself from a decision-making process where he has a matter of conscience that precludes him from acting in the way which the executive has obviously decided to act—in effect, an executive imposing.

And we accept that they should not do that. I accept absolutely that on conscience issues the executive should not impose on any one member of the executive, but the situation could have been avoided. Mr Moore's cabinet colleagues should never have put him in that position. It could have been avoided through the device of a private member's bill.

MR SPEAKER: Order! The member's time has expired.

MR STEFANIAK (Minister for Education and Attorney-General): Mr Speaker, I seek leave to speak to Mr Stanhope's amendments Nos 4 and 5, because the issues are very similar.

Leave granted.

MR STEFANIAK: The amendments are misconceived. On the advice I have, these amendments actually require all members of the executive to approve the making of a regulation, which means that all members of the executive must vote affirmatively in relation to the regulation. There is no latitude for majority decisions, abstentions or absences. In addition, the minister responsible for the act under which the regulation is made and one other minister must sign the regulation.

I am advised that the amendment is actually inconsistent with the scheme in the self-government act. While subsection 22 (2) of the self-government act provides the Assembly with power to make laws with respect to the exercise of powers by the executive, section 22 does not give the Assembly power to make laws inconsistent with the self-government act. Subsection 43 (2) of the self-government act allows the Chief Minister to authorise a minister to act on his or her behalf, or on behalf of any other minister. Now, the Chief Minister has exercised this power, and indeed each minister is also authorised to act on behalf of every other minister, and we regularly see examples of that in terms of the Chief Minister exercising that power and even ministers authorised to act on behalf of other ministers. That is something that just occurs. To the extent that the amendments attempt to require a particular minister to sign a regulation, it dilutes the Chief Minister's powers under our constitutional arrangements, and therefore must fail.

Not only do the amendments fail the test of consistency with the self-government act, but also legislation of this type introduces procedural inflexibility into the government of the territory. It also increases the administrative burden on members of the Assembly. Those disadvantages and the associated expense of administering the act seem not to have been accompanied by a commensurate improvement in the quality of government or Assembly decision-making.

Having regard to the number of regulations that are made under territory laws—since self-government at most about 45 a year—the procedures proposed by Mr Stanhope for making regulations would amount to an inconvenience. They would require all regulations to be considered by cabinet, and an additional record being generated for the approval of all members of the executive. Where a member is not present, through illness or absence, the measure could not proceed.

The practices and procedures that relate to the making of regulations in the Commonwealth, New South Wales and Tasmania have been studied. In all these jurisdictions the usual, if not invariable, practice is for regulations to be made with the

active participation of the minister who administers the relevant act. There is not the same requirement, as proposed by Mr Stanhope's amendments, for all members of cabinet to invariably approve the making of a regulation.

However, it would seem that, if regulations were required to be made and the relevant minister was not prepared to concur, then either the Premier or Prime Minister would have to intervene or the matter would have to be considered by cabinet. If cabinet decided in favour of the regulations being made, the conventions that flow from cabinet solidarity would apply.

To go through jurisdiction by jurisdiction on that, in Tasmania cabinet usually gives in-principle agreement for regulations to be prepared. In the Commonwealth and New South Wales, cabinet would only rarely consider the needs for regulations to be drafted. Regulations are made by the Governor or the Governor-General acting on the advice of the executive council. The Premier or Prime Minister has at least informal control over the making of regulations. This occurs because the executive council secretariat is located in the Chief or Prime Minister's department. In Tasmania, in addition, it is necessary for the Premier to approve in writing the executive council's agenda.

The quorum for a meeting of the executive council is usually the Governor or Governor-General and two executive councillors. The executive councillors are usually ministers but actually, in the Commonwealth, parliamentary secretaries are also councillors. An executive council minute recommending that regulations be made is signed by the minister, usually the responsible minister who administers the relevant act, but it may also be signed by a minister acting for and on behalf of the responsible minister.

In his amendments Mr Stanhope has attempted to legislatively impose the practices that apply in other jurisdictions. And in those jurisdictions the practices are supported more by the conventions of responsible government than by legislation. Attempting to impose the practices through legislation invariably leads to the practices losing the flexibility that is available to the states and indeed to the Commonwealth. Imposing these practices legislatively also exposes the ACT regulations to additional grounds for challenge.

The acid test of the suitability of a regulation is that it must survive scrutiny and the possibility of disallowance by the Assembly. The interests of good government are not served, I would submit, by slavishly following the dictates of legislation of this type.

MR OSBORNE (12:16): I am assuming that Mr Stanhope has the numbers for this, because I have only just received a copy of his amendments. I have not been approached by his office or received a copy of them before this so I do not feel I am in a position to support his amendments. I have listened to the debate this morning and, although there is some merit in what Mr Stanhope said. He spoke about the issue that happened last year, but I think that, if the boot was on the other foot and I was the health minister and I was asked, for example, to sign off on opening a euthanasia clinic or something, I would be reluctant to do so.

But I have to say, Mr Speaker, I have only just received these amendments and—

Mr Stanhope: They've been around for over a year.

MR OSBORNE: Have they? Even so, I think that the government's option is probably a more sensible one. I have only thought about how I would approach this, should I be part of the next Stanhope government after the next election—or Ms Tucker. But, as I said, I have only really had this morning's debate to listen to to form an opinion on this, so I will be voting with the government on this one.

MR SPEAKER: I understand that the amendments were circulated in this chamber on 27 February.

MR STANHOPE (Leader of the Opposition) (12.18): I will just speak again to that matter to respond. In fact, the principle I am raising was circulated in a bill which I tabled probably 18 months ago. So the issue has been alive, and has been present in legislation tabled and available to everybody, for probably 18 months. And the matter has arisen again in the context of this particular bill, which is a convenient place to put it. Having said all that, I must say that I thought my arguments were just so sound, sensible and self-evident that I just assumed that the entire Assembly would support them. I guess I still live in hope.

Another point I would make is in response to a comment made by the Attorney. I think the Attorney acknowledges that perhaps it is unfortunate that we need to provide through legislation a mechanism for ensuring that cemented parliamentary conventions are maintained and observed. I thought it was a very telling observation, Attorney, and acknowledgment by you that perhaps in some instances some of those conventions that we all regard as absolute simply are not observed in this place.

I would be prepared to acknowledge, quite frankly, that my decision to introduce the legislation was the result of a growing frustration at the willingness of this government to simply ignore any convention that it is not convenient to comply with. I could list the litany of breaches of sound convention that has characterised this government, which is a matter of grave concern for me. And it was out of frustration at the capacity of this government to ignore conventions, to undermine the Westminster system, that led me to introduce the proposal in the first place.

And, Attorney, I acknowledge your honesty in the suggestion that perhaps it is a pity that we have to resort to legislation to ensure that some of these conventions are at least acknowledged by the government, if not observed. That was an honest admission, Attorney, and I thank you for it.

MR OSBORNE (12.20): I concede that I do recall Mr Stanhope talking about this 18 months ago, but I do reserve the right to at least object to not being informed about it, because I do not actually go over papers over the last 18 months and I was not aware it was on. Mr Stanhope's arguments were not too bad—but just not good enough.

Question put:

> That **Mr Stanhope's** amendment be agreed to.

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

MR SPEAKER: Mr Stanhope, do you have another amendment?

Mr Stanhope: I will not move that amendment. I will not proceed with that. The issue is the same as the one just voted on—well, sort of.

MR SPEAKER: I understand, thank you.

MR STEFANIAK (Minister for Education and Attorney-General) (12.25): Mr Speaker, I move amendment No 5 circulated in my name *[see schedule 1 at page 523]*.

Mr Speaker, this amendment is consequential on the insertion of the proposed Part 5.2A of my amendment No 14.

Amendment agreed to.

Clauses 31 to 35, as amended, agreed to.

Clause 36.

MR STEFANIAK (Minister for Education and Attorney-General) (12.26): Mr Speaker, I seek leave to move amendments Nos 6 and 7 circulated in my name together.

Leave granted.

MR STEFANIAK: Mr Speaker, I move amendments Nos 6 and 7 circulated in my name *[see schedule 1 at page 523]*.

Amendment No 6 is consequential on amendment No 7. Amendment No 7 is a technical amendment that brings the language of clause 36 (1) more closely into line with the language currently used in the provisions that confer power to make statutory instruments, for example regulations.

For example, the standard regulation-making power is as follows:

> **Regulation power**
> The executive may make regulations for this Act ...

That is just an example.

Amendments agreed to.

Clause 36, as amended, agreed to.

Clause 37 agreed to.

Clause 38.

MR STEFANIAK (Minister for Education and Attorney-General) (12.27): Mr Speaker, I ask for leave to move amendments Nos 8 to 10 circulated in my name together.

Leave granted.

MR STEFANIAK: Thank you, Mr Speaker. I move amendments Nos 8 to 10 circulated in my name *[see schedule 1 at page 523]*.

Amendment No 8 is consequential to amendment No 10. Amendment No 9 adds examples to clause 38 (2) to clarify the operation of a subclause. Clause 38 (2) provides that the power to amend or repeal a statutory instrument is exercisable in the same way and subject to the same conditions as the power to make the instrument. The example makes it clear that, if the instrument is a disallowable instrument, an amendment or repeal of the instrument is also a disallowable instrument. If the instrument is a notifiable instrument, an amendment or repeal of the instrument is also a notifiable instrument. And if notice of the making of the instrument must be published in a newspaper, notice of an amendment or repeal of the instrument must also be published in the newspaper.

Amendment 10 is an amendment of clause 38, and provides that the clause is subject to any provision of the act or statutory instrument, the authorising law, that gives the power to make the statutory instrument concerned. Although it is not common, acts occasionally provide for a statutory instrument to be amended or repealed in a different way to the way in which the instrument was made. The amendment recognises this practice.

Amendments agreed to.

Clause 38, as amended, agreed to.

Clause 39.

MR STEFANIAK (Minister for Education and Attorney-General) (12.28): Mr Speaker, I move amendment No 11 circulated in my name *[see schedule 1 at page 523]*.

This amendment replaces the old clause 39 with a new clause 39 in response to concerns raised by the Standing Committee on Justice and Community Safety in the Scrutiny of Bills Report No 15 of 2000. I will not read my spiel, which is about a page long, unless members want me to. Does anyone particularly want me to? No? All right.

Amendment agreed to.

Clause 39, as amended, agreed to.

Clauses 40 to 43, by leave, taken together and agreed to.

Clause 44.

MR STEFANIAK (Minister for Education and Attorney-General) (12.29): Mr Speaker, I move amendment No 12 circulated in my name *[see schedule 1 at page 523]*.

Amendment No 12 makes it clear that clause 44—"An instrument may authorise determination of a matter …"—applies to a state of mind; for example, the forming of an opinion or being satisfied. In a statutory instrument it is frequently necessary to make provision requiring someone to form an opinion or be satisfied about something. For example, the statutory instrument may provide for courses or qualifications to be approved by an official if the official is satisfied that they actually meet a specified standard; hence the need for this.

Amendment agreed to.

Clause 44, as amended, agreed to.

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

Sitting suspended from 12.30 to 2.30 pm.

Questions without notice

Manuka—car parking

MR STANHOPE: Mr Speaker, my question is to the Chief Minister. Yesterday, in a flurry of frenzy, the Chief Minister and his deputy denied there was any agreement between the government and Manuka Plaza developer, Barry Morris, to restrict street parking in Manuka. On television last night the Chief Minister denied there was any agreement. Video tapes of the news reveal the following statements by the Chief Minister: on Win news the Chief Minister said:

> No, no—no, we didn't make an agreement.

On Prime news the Chief Minister said:

> No, no—no, we didn't make an agreement.

On Capital news the Chief Minister said:

> No, no—no, we didn't make an agreement.

On each news broadcast viewers saw footage of a file note of May 1997. The file note, signed by your predecessor's and now your chief of staff, showed you attended the meeting and recorded the very agreement you deny existed.

Today ABC radio reports that the document has in fact been found in your office, where it has been since 1997, and that you have now handed it to Mr Smyth. The document reads, I understand:

> …it was agreed at this meeting that:
>
> 1. the ACT government would impose parking restrictions on the streets in the Manuka vicinity as shown on the attached map.

This is the agreement in respect of which last night you said:

> No, no—no, we didn't make an agreement.

The same agreement—the agreement to impose parking restrictions, the agreement which didn't exist last night.

Chief Minister, in your frenzied quest for the truth in the Assembly yesterday and on radio over the past 24 hours, you have placed great store on the truth. When did your chief of staff remind you of the meeting and the agreement and when did you become aware of the agreement?

MR HUMPHRIES: Mr Speaker, I thank Mr Stanhope for that question. I maintain that there is no agreement.

Mr Stanhope: Here it is.

MR HUMPHRIES: No. There is a file note. If Mr Stanhope has not tabled it before, I will do so now. There was a file note taken of a meeting between Mr Morris, me, the then Chief Minister and some others on 22 May 1997. That meeting minute, that file note, records, among others, the following words:

> In order for the project to proceed, it was agreed at this meeting that:
> 1. the ACT government would impose parking restrictions on the streets in the Manuka vicinity as shown on the attached map, with some allowance for minor variation following public consultation.

Mr Speaker, it was indeed discussed at that meeting and it was agreed that there should be those restrictions on parking around Manuka.

Let me illustrate the point, however, that there is a difference between the sort of agreement Mr Stanhope is talking about and an undertaking given.

Opposition members interjecting—

MR SPEAKER: Order! I will deal with the next person who interjects.

Mr Corbell: It's that bad, is it?

MR SPEAKER: Yes.

MR HUMPHRIES: The difference between those two positions is that the government has always made clear its view about the need to restrict parking in parts of the ACT where that would have an adverse impact, if unrestricted, on the amenity of ACT residents.

Mr Corbell: It is basic to provide—

MR SPEAKER: I warn you, Mr Corbell.

MR HUMPHRIES: Mr Speaker, let me give an illustration of what I am talking about. I am walking down the street, going to the cinema, and I meet you on the way. You say to me, "Gary, where are you going?" I say, "Greg. I am going to the cinema." You say, "I am going to the cinema as well. I will come with you and we will go to the cinema together." We have agreed—have we not?—to go to the cinema. But am I going to the cinema because I met Mr Cornwell and because I have made an agreement with him to go to the cinema together? Am I doing it for that reason? No, I am not.

The government's position has always been clear. It wanted to have restrictions around Manuka for the purposes of alleviating the pressure on residents of that area of Canberra. Mr Speaker, that has always been the position of the government.

To support that view, let me put to members the alternative. Let us suppose, as Mr Stanhope would put it to the Assembly, today, that but for this agreement—as he puts it—there would not have been any restrictions on parking around Manuka; it was to bring people to use the parking station. If that is the view, you have to ask yourself the question: why would the government—

Opposition members interjecting—

MR HUMPHRIES: I am asked the question. I am trying to give an answer.

Mr Wood: You are waffling all over the place; you are not giving an answer. Come on!

MR HUMPHRIES: Listen and you might learn something.

MR SPEAKER: I warn you, Mr Wood.

MR HUMPHRIES: Mr Speaker, if Mr Stanhope's view is correct that, but for this agreement there would not have been restrictions on parking around Manuka, how does one explain the fact that, everywhere else in the ACT where there are multi-storey paid car parking structures, there are also restrictions on parking in open streets? In fact, it doesn't make any sense to have paid parking structures in the ACT if you allow beside them to exist at the same time—

Mr Moore: I am sorry, I have to take a point of order. Mr Speaker, the member you have warned, Mr Corbell, did interject again. This time he interjected, "You lie."

MR SPEAKER: Did you use that expression, Mr Corbell?

Mr Corbell: I am happy to withdraw the comment, Mr Speaker.

MR SPEAKER: Be thankful that I didn't hear you.

Mr Stanhope: It was a very reasonable comment in the circumstances.

MR SPEAKER: Be careful, Mr Stanhope.

Mr Moore: Mr Speaker, on a point of order: Mr Stanhope will need to withdraw as well.

MR SPEAKER: Gentlemen, we have a great deal of work to do today. It would be a great pity if several of you were not here to participate.

Mr Moore: Mr Stanhope needs to withdraw. He said, "It was a reasonable comment to make under the circumstances." He must withdraw his implication.

MR SPEAKER: I want you to withdraw too, Mr Stanhope.

Mr Moore: He must withdraw his implication that Mr Humphries lied.

Mr Stanhope: I cannot remember precisely what it was I said, Mr Speaker. What was it that I said—that it was reasonable to suggest—

MR SPEAKER: Just withdraw.

Mr Stanhope: If I said that it was reasonable to assume in the circumstances that the Chief Minister had lied, then I withdraw that.

MR HUMPHRIES: To answer part of Mr Stanhope's question—when was I aware of this minute?—I was aware of this minute as soon as it came to light, which was in the last 24 hours, I think. It does not change my view about what was discussed at that meeting at all.

There are two constructions of what those words mean. The fact is that the government's view about parking restrictions has been the same for some time. You need to ask yourself the question: why would the government agree to do something which it otherwise was not planning to do, when the same approach has been taken to supporting paid parking structures everywhere else in the ACT?

Those opposite can scoff and make allegations as they see fit. But I maintain the view that the approach we have taken is a sensible approach to this issue. Members might forget that we have two paid parking structures at Manuka—one at the end opposite to the one built by Mr Morris. The government, similarly, has a position of supporting that structure by trying to restrict free parking on surrounding streets, for the same reason: it impacts adversely on the residents of that area. Are you people opposed to that? I assume not. That being supported, I hope, by everybody in this house, it is appropriate for steps to be taken by the government to ensure that restrictions are placed on parking in the areas around such structures for the sake of the residents and for the sake of orderly parking in the territory.

MR STANHOPE: I ask a supplementary question. The agreement that was made between Kate Carnell, Ian Wearing, John Walker, Gary Humphries, Stephen Forshaw, Barry Morris and Tom Kean on 22 May states:

> In order for the project to proceed, it was agreed at this meeting that:
>
> 1. the ACT government would impose parking restrictions ...

Coincidentally, it was made in the same week or fortnight that the then minister for planning, Mr Humphries, initiated an agreement with a developer in relation to Hall/Kinlyside. Members of the Assembly will recall that, in relation to the debate around the Hall/Kinlyside development, the now Chief Minister, Mr Humphries, apologised to the Assembly for misleading the Assembly about the circumstances of that arrangement. Mr Humphries said, as members will recall, that the developers brought three leases in and put them on the Chief Minister's desk. He later withdrew that and apologised for misleading the Assembly and the people of Canberra. Will the Chief Minister now apologise to the people of Canberra—

MR SPEAKER: The question is out of order. You know perfectly well that there can be no preamble to a supplementary question. Secondly, Hall/Kinlyside has nothing to do with the original question.

Parking for the disabled

MR OSBORNE: I am little bit disturbed, because a couple of my children are here and they have just heard that when you agree to something you do not agree. I am a bit worried about how to handle them when I get home. My question is to the Minister for Urban Services. It is about disabled parking. Minister, I have been informed by a constituent that there are now fees for some disabled parking spaces in Canberra which until now have always been free. The two examples given to me were Canberra airport and Bruce Stadium. The disabled parking spaces at the airport now cost the same as regular car parks, while at Bruce Stadium they are $5. Minister, are you aware of these charges, and do they have government support?

MR SMYTH: I was not aware of the charges for the disabled parking. I will have to take the question on notice and find out the rationale for that.

Economy

MR QUINLAN: My question is to the Chief Minister. Speaking of the truth, the feature of the last six years in the ACT has been the in-your-face self-congratulations by your predecessor and latterly yourself as to the performance of the ACT economy and your participation in it. I give you as examples "New incentives for jobs" out today and "Government cuts tax rates", word for word taken from last year's budget and milked to the nth degree last year but put forward with the intention that it might be picked up as something new. I ask the Chief Minister and Treasurer whether it comes as something of a surprise to him that the latest Commonwealth Grants Commission update includes the following words:

> Since 1994-95, the ACT economy has grown at a slower rate than the rest of Australia, on average, and its relative revenue capacity has declined.

MR HUMPHRIES: First of all, let me answer the comment about self-congratulation. Mr Quinlan continually criticises this and says what a terrible thing it is for the government to be out there selling its achievements. There are two comments I would make about that. First of all, it is not my fault if Labor had very few achievements to be selling during its time in office and could not go out and make these sorts of statements because there was not good news to deliver at that stage.

My recollection is that Labor is very good at self-congratulation. We can produce a few examples of that. My "Face of Labor" file upstairs has a great deal of self-congratulation in it. I think the truth is to be found in an article written a few weeks ago by Catriona Jackson in the *Canberra Times*.

Mr Stanhope: Not by you?

MR SPEAKER: Be careful, Mr Stanhope.

MR HUMPHRIES: No, by Catriona Jackson. Mr Speaker, I do not know why I am bothering to answer questions if they are talking at me the whole time. If that article is to be relied upon, the view inside the ALP is that the government's approach is quite a sensible approach.

According to this article, despite your protestations, Mr Quinlan, the view around the ALP is that this is actually quite a good approach to take, particularly as far as the budget is concerned, to deliver good news to the ACT community.

It is true to say that, particularly in the early period since 1994-95, the ACT did not enjoy good economic conditions. In 1996, as members know, the then newly elected Commonwealth government announced its intention to considerably contract the federal public service, which particularly meant the ACT receiving the impact of that. As I recall the estimates of the time, something like 7,000 jobs were shed in the Commonwealth public service in the ACT alone. There is no doubt about the fact that, during the early phase of the ACT's grappling with those problems, we did have low growth, we did have poor economic performance and we did have rising unemployment. That is all very true. But the point is not what we had to deal with in 1995-96 but what we have been able to create since that time. What we have created since that time is record—

Mr Quinlan: Slower than average growth, since that time.

MR HUMPHRIES: No, no, no. That is the totality—

Mr Quinlan: Since.

MR SPEAKER: Order! Any more interjections and a few more people will get warned.

Mr Corbell: I think you are doing what you did yesterday, Gary.

MR HUMPHRIES: Mr Speaker, he continues to ignore you.

MR SPEAKER: Mr Corbell, do you want to be here for the rest of the afternoon?

Mr Corbell: Love to, Mr Speaker.

MR SPEAKER: Then be quiet. Go and take a walk or something.

MR HUMPHRIES: Mr Speaker, those figures relate to the whole of that period. At the beginning of that period growth was down. You read it for yourself, Mr Quinlan. It relates to the whole of that period—not just the first part of it but the whole period. The fact is, as you well know, in the last three or four years growth in the ACT has picked up dramatically.

Mr Quinlan: Due to what?

MR HUMPHRIES: Due to a range of factors, including the policies of this government to create jobs and stimulate economic growth in this territory. Our effort in that respect has been enormous. We have created something like 17,000 jobs in this territory—that is net of the 7,000 or so that have been contracted by the Commonwealth government. Yes, growth was slow in the early stages of the Carnell government, but we have turned that around. I am proud of that fact, and the government has worked hard to achieve that. It is no accident. If Mr Quinlan does not like that fact, he can take it up with the Grants Commission but I think the achievements stand for themselves. If he wants to see what the current picture is in the ACT, he should look at the figures published in the last budget statement. That tells you what the picture is today.

MR QUINLAN: I have a supplementary question. Drawing a line through state final demand figures would show that in fact, in the recent years that you refer to, it is public sector expenditure in the ACT that has been the driving force behind some recent economic improvement, something even conceded in a briefing that you gave the Select Committee on Budget Parameters. Do you concede that to a large extent the following events, issues and projects have had a lot to do with better economic times in the ACT: expenditure on the Y2K threat; the introduction of the GST and the considerable growth in the Australian Taxation Office; the construction of the National Museum, all under public funds; and, of course, the generally buoyant Australian economy, which we seem to be lagging behind but nevertheless being pulled along somewhat?

MR HUMPHRIES: Of course they have had a bearing on all of those things, and of course the national economy has been helpful to the ACT. But you cannot be pulled along by the national economy if you are actually out in front of it, which is what the ACT is. We have higher growth in the ACT than the national average, we have lower unemployment than the national average, and quite substantially so in both cases. Are you saying that the ACT's lowest unemployment rate of the whole nation is somehow created by the fact that the rest of the nation is doing very well? If that is the case, why are not they enjoying a lower unemployment rate than we are?

The challenge I throw back to Mr Quinlan is this: if I concede that these things have had a lot to do with the buoyant state of the ACT economy—and of course they have had something to do with it—are you going to concede, whenever this year that there is a federal election going on and your party is bashing the hell out of the federal government, that its decision about the GST, its decision about a national museum in this

national capital and a range of other decisions about the ACT have actually been fantastic boons for this territory? Are you going to do that at that stage?

No, I expect is the answer. There will be a sullen silence from Mr Quinlan come that time. He will be otherwise detained when people are arguing about the benefits of the federal government's contribution to economic growth in this territory, and his colleagues will be out there saying, "The federal government has ripped the guts out of Canberra, it has decimated Canberra and all these terrible things have happened because of the federal government." You cannot have your cake and eat it too. You had better run the same line today that you are running in the federal election, but something tells me that you will not be.

Road funding

MRS BURKE: My question is to the Minister for Urban Services, Brendan Smyth, and it relates to roads and road safety. Is the minister aware of comments made in the media recently about road funding? Have these comments contributed to an accurate debate about road funding in the ACT?

Mr Corbell: I raise a point of order, Mr Speaker. The question asks for an expression of opinion. Surely it is out of order.

MR SPEAKER: Yes, I think it may need to be rephrased, if you are going to put it in. It is a fair comment.

MR SMYTH: No, Mr Speaker, it is a question of fact: am I aware of comments, and of course I am; I am certainly aware of the comments, Mr Speaker.

Mr Corbell: On the point of order, Mr Speaker: it is asking for an expression of the minister's opinion not relating to areas of his portfolio responsibility.

Mr Humphries: Mr Speaker, the question is, in part: is the minister aware of comments made in the media recently about road funding? There is no expression of opinion about that whatsoever.

MR SPEAKER: Is the minister aware; that is correct. You may address that part of it but do not express an opinion, because I uphold Mr Corbell's point of order.

MR SMYTH: There are no opinions. This is straight accounting; it is actually getting to the numbers. I am aware of comments about road funding recently, Mr Speaker, and the comments, quite frankly, are inaccurate, irresponsible and ultimately misleading—and they are Mr Quinlan's. Instead of sitting there and chortling, as they usually do, I would suggest that Mr Quinlan should hang his head in embarrassment because the alleged shadow treasurer—the potential future Treasurer and would-be Chief Minister—has really got his figures wrong this time, and he is so far off that I would suggest that even a first-year accounting student would be laughing at this little gaffe.

Mr Quinlan: He'd be ahead of you, mate. You're a nil-year accounting student.

Mr Humphries: Mr Speaker, I rise on a point of order. Mr Quinlan and others have been persistently interjecting during Mr Smyth's comments. You have warned them already today about this several times. I ask you to ensure that they do not continue to breach the standing orders.

MR SPEAKER: I uphold the point of order.

MR SMYTH: If Mr Quinlan's selective analysis of road funding is anything like the way he would run a territory budget, then we all have very serious cause for concern. In one case, looking at the figures he has calculated for road funding in the year 1999-2000, they are over 300 per cent off the amount actually spent, and the make-up of the figures is even more laughable.

Mr Quinlan: It depends on how you do it, mate.

MR SMYTH: The shadow Treasurer runs the risk of becoming the Mr Magoo of ACT politics. He cannot read, he cannot count and he just cannot see.

Mr Quinlan: Different accounting standards, you know.

MR SPEAKER: I warn you, Mr Quinlan. That is three of you now. Excuse me, minister. You may continue.

Mr Corbell: On a point of order, Mr Speaker: whom have you just warned?

MR SPEAKER: I beg your pardon.

Mr Corbell: Whom have you just warned, Mr Speaker?

MR SPEAKER: Mr Quinlan.

Mr Corbell: Is that two or three?

MR SPEAKER: Three.

Mr Corbell: Who is the third?

MR SPEAKER: Mr Wood. And yourself.

Mr Wood: Me?

MR SPEAKER: Yes, it surprised me as much as it surprised you, Mr Wood.

MR SMYTH: In the figures that Mr Quinlan very selectively released only to WIN TV, presumably because he was too embarrassed to put them in a formal press release, he has deliberately excluded the works in progress and the roads funded by the planning and land management section of the budget.

He has also used the projected figures included in the budget paper, rather than going to the actual expenditure as included in departmental annual reports. We can show you the reports if you have not seen them Mr Quinlan. They are the reports that are tabled in this place for all to see and peruse at their leisure.

But, apparently for Mr Quinlan, a road does not exist just because the earth movers have cleared the area and laid the pavement materials, because they have put down the markings, because they have put up signs and installed guttering and drainage systems. No, according to Mr Quinlan, roads only seem to exist if their funding appears in a particular line in a particular budget paper.

So, Mr Speaker, in 1998-99, of the $4.6 million that we spent on actually laying paving materials and putting down markers over which cars now drive, Mr Quinlan could only find $600,000 worth of road funding in the budget papers. What are we to assume of the remaining $4 million of the roads funding? That the roads were not actually built at all? That they are simply air and Mr Quinlan gets to come to work in some sort of hovercraft, this imaginary technology that the Labor Party seem to have in their minds? One cannot imagine how Mr Quinlan gets to work at all.

Now similarly, according to Mr Quinlan, $6.8 million of the roads constructed in 1999-2000 do not exist either. One would assume that all the road construction going on at that time must have just been a hoax, because Mr Quinlan cannot find it in the budget papers. Is Mr Quinlan suggesting that those jobs that were created, and all those road builders, are just sitting by the roadside having tea, if they exist at all? Perhaps they were talking about sailing and gardening. It appears that it is Mr Quinlan who should get off the grass.

Mr Speaker, it is interesting to note that Mr Quinlan does not have urban services as part of his shadow ministerial responsibilities. That does not appear to matter. As shadow Treasurer, he obviously cannot see the figures in our annual reports and, if he was the shadow Minister for Urban Services, he obviously would not be able to see the roads either.

Mr Quinlan should stick to that which he knows best which, he is rapidly revealing, is very little.

MR SPEAKER: Mrs Burke, supplementary?

MRS BURKE: Thank you, Mr Speaker. I have a supplementary question in relation to road safety. Is the minister aware of comments made recently about the location of speed cameras in the ACT? Do these comments make sense?

Mr Berry: That is not a supplementary.

MR SPEAKER: No, that is not a supplementary. I am afraid it relates to a separate item.

Commercial agreement—harvesting cork plantations

MR CORBELL: My question is to the Minister for Urban Services. In response to a question on notice, No 319, that I asked the minister earlier this year, the minister confirmed that no commercial agreement had been reached between ACT Forests and

the company Clifton Amorim to harvest the ACT's cork plantation. However, an article on page 23 of the *Canberra Times* of 2 February reported that employees of Amorim were in fact harvesting the plantation.

Will the minister confirm that a commercial agreement now exists between the ACT government and Amorim for harvesting the plantation, and will he explain how the harvesting of the plantation was let, and whether or not it was the subject of a public tender process?

MR SMYTH: Mr Speaker, I can only assume that, at the time that I sent Mr Corbell the letter in response to his question on notice, no contract had been let. I will check on the process that was followed.

Amorim is one of the few companies in the world with the expertise to help manage and harvest cork and they have been very helpful in assessing what it is we should do with our cork plantations, which would appear to be the only workable cork plantations in the southern hemisphere. I will have to provide the details to the member.

MR SPEAKER: Supplementary, Mr Corbell?

MR CORBELL: Will the minister table a copy of the arrangement with Clifton Amorim in keeping with the Humphries government's new enthusiasm for open government?

MR SMYTH: I will look at the agreement and consider whether or not it should be tabled. Contracts between commercial entities are something that we take very seriously but I would certainly be willing to give Mr Corbell a briefing on the subject of Amorim and their contract.

Redevelopment—Deakin oval

MS TUCKER: My question is directed to the Minister for Urban Services and it is a further question relating to the agreement that the government has made with Croatia Deakin Football Club regarding the redevelopment of the Deakin soccer oval.

Minister, you told us in the last sitting week that the Croatia Deakin Football Club was granted its new lease over the oval under section 163 of the land act. This section related to the issue of concessional leases to community organisations that are not for profit and do not hold a club licence under the Liquor Act. Presumably, organisations that have a liquor licence are able to generate their own revenue and therefore do not need to be given concessional leases.

It seems, however, that there are actually two clubs involved in the Deakin soccer oval. The lease of the oval was originally held by the Croatia Deakin Soccer Club, not the football club. The Croatia Deakin Soccer Club also holds the lease of the land in Grose Street, Deakin, on which its club building stands, and also holds a club licence under the Liquor Act.

However, in 1998, when the plans for oval redevelopment were started, the lease of the oval was transferred to the Croatia Deakin Football Club, a new separately registered organisation that does not have a liquor licence. Interestingly, the committees of the

soccer club and the football club are virtually the same, and the football club's registered address is actually the soccer club building.

The government then made the agreement with the football club last year to give it a new concessional lease over the oval and the grant of adjacent land for residential units. This creation of two clubs by the same people, the Croatia Deakin Football Club, with a concessional lease of the oval, and the Croatia Deakin Soccer Club, which has the liquor licence, seems a very artificial mechanism to get around a requirement in the land act that concessional leases are only to be given to organisations without a liquor licence.

Minister, could you advise whether this issue was investigated when the oval lease was granted to the football club and, if so, whether you believe this to be an acceptable arrangement?

MR SPEAKER: I remind Ms Tucker that questions shall be brief—standing order 117 (a).

Ms Tucker: It was necessary for the question.

MR SPEAKER: I understand that.

MR SMYTH: Mr Speaker, there was a large amount of detail sought in what Ms Tucker asked. It is not detail that I have to hand. I will have to seek advice from the department.

MS TUCKER: I have a supplementary question on the same issue. Minister, on Tuesday, you tabled a letter from the conservator supposedly giving retrospective consent to the granting of the lease of the oval to the football club. Could you tell us whether you read the letter, because it refers to the wrong block? It refers to block 2 section 33, which is the residential land next to the oval. It should have referred to block 16 section 36. Will you tell the conservator to rewrite the letter?

MR SMYTH: Again, Mr Speaker, I do not have the letter or the facts to hand. I will have to check with the department. I will get back to the member as quickly as I can.

Burglaries

MR HARGREAVES: My question is to the minister for police, given the minister's fondness for quoting figures. On Tuesday in this place, in response to a question from me, the minister said—if he would like to jot down the words it would be helpful to him:

> This is the government that put forward $4.2 million to fund Task Force Dilute and Task Force Handbrake…

You said, Minister, that all of the $4.2 million was allocated to task force operations; but, according to page 69 of *2000-01 Budget Paper No 3*—if you have it there, I suggest that you look at it—the $4.2 million allocation consisted of $2,090,000 for the redeployment of 29 police officers, $1,590,000 for an additional 15 police officers and $528,000 for the community beat police program. That was for the community beat police program, not a task force.

Did you intend to mislead this Assembly by implying that the funds were directed to task force operations and not to programs approved by this Assembly in that budget?

MR SMYTH: Clearly, as Mr Hargreaves has quoted from the budget, the $4.2 million was used for a range of police services. If I have used incorrect words or misled, it certainly was not the intention. The important thing here is that there was the $4.2 million in the budget. It is a budget that they opposed. They voted against putting extra police onto the beat. Like every other budget that they have opposed in this place, whether it be for job initiatives, business initiatives or putting more police onto the beat, they opposed that budget. If I got it wrong, and it appears so, I would apologise and correct the statement.

MR HARGREAVES: I have a supplementary question, Mr Speaker. I think the Assembly should accept the minister's apology. Will the minister, having apologised to this Assembly, apologise to the community for using funds which were otherwise intended?

MR SMYTH: Mr Speaker, we have not misused funds for what they were intended. As clearly outlined in the budget paper that Mr Hargreaves just quoted, they were used for exactly what they were intended.

Trees in school grounds

MR WOOD: My question is to the Minister for Education. Everyone is saddened by the death of a young lad in a school ground yesterday; we feel for the family and the school. I expect that one outcome will be a rapid reassessment of potential dangers from trees in school grounds. I guess that schools will be on to that today. Perhaps it is a regular activity. Minister, can you assure parents that attention is being paid to this problem at a departmental level as well as at schools? Is that an ongoing activity?

MR STEFANIAK: I thank the member for the question. It certainly was a tragedy. I have spoken to Michael Ford, the principal of the Brindabella Christian College, and extended my sympathies. I told him that my prayers are with the school and the family. The school is coping very well. It has had counsellors in from the church. The police were on the scene within one minute, I am advised by the principal, who was particularly impressed with their efforts and the efforts of the ambulance service and other government services.

I understand that the young lad would not have noticed or felt anything as it seems that the death was a very quick one, but it was quite tragic. No doubt, the investigations will continue there. I think all members would join me in extending sympathy to the school and, especially, the family of the young boy concerned. As someone with a seven-year-old who is a climber, it has really brought home to me just how things like that can happen.

Mr Wood mentioned the trees. No doubt, the independent schools and the Catholic Education Office will do what they need to do in relation to their systems. I can say in relation to the government sector that a tree audit was done in 1999 and, as a result, certain action was taken. The work on trees averaged about $2,000, I think, at each site.

For some of our older schools, the cost was more. It was something like $6,000 a site for ensuring that the trees were safe and limbs were cut where necessary. At some of the newer schools, with very small trees, nothing much was involved.

In all, there was about $180,000 of expenditure on trees across the system to make them safer. As I have indicated, it ranged from nil at some sites to $6,000-plus at some of the sites where there were bigger trees and older trees. That occurred recently in the government sector as a result of that audit. Obviously, the situation not only in the government sector but also in the other sectors will be ongoing and, hopefully, we will not have similar accidents again. Again, I extend my sympathy to everyone concerned. I will put on the record for Mr Wood what we have done at the departmental level.

MR WOOD: I have a supplementary question, Mr Speaker. I thank the minister for that response; it was reassuring. It seems from the response that any potential problems with school-based management and that responsibility are not a condition on this sort of occasion.

MR STEFANIAK: That was not at a government school, but I do note that a large amount of that money would have been spent at the schools because of the small amounts of money actually involved. I am not quite sure of the exact figure, but some of those matters were dealt with by the schools. I do not have the exact figures on that, but I do recall reading about it fairly recently.

Suburban streets—speed limits

MR KAINE: My question is to the Minister for Urban Services—and I hope he is not too discomforted by its searching nature. Minister, today a 50-kilometre an hour speed limit applies on most of our suburban streets. I notice that you have adopted the Queensland model of just a single sign at the entrance to a suburb indicating that the speed limit in that suburb is 50 kilometres an hour unless otherwise posted, which is a sensible approach in minimising the cost.

However, there is another low cost signage initiative that I am aware of which is used in some parts of New South Wales, where the state government has issued 50-kilometre an hour stickers to be put on the side of green garbage bins. As a result, motorists who drive up these street on garbage day are confronted every 20 metres with a 50-kilometre an hour sign, which I think is an interesting and very inexpensive reminder of the speed limit. Minister, are you aware of this initiative and, if not, would you consider adopting it as a very inexpensive way of drawing people's attention at least once a week, sometimes twice, to the fact that there is a 50-kilometre an hour limit on a certain street?

MR SMYTH: Mr Speaker, I thank Mr Kaine for the question and for some advance notice that he was going to ask it. I was not aware of this practice but I think it is a very good idea. Anything that we can do to drive home the message of what is the appropriate speed limit on all our streets is a very worthwhile consideration. I am sure that Mr Kaine, in his endeavours in the draft budget process, of which he is such a great supporter, will suggest that as a way in which the government could better spend some of its money. I thank the member for his suggestion.

Retail sector

MR HIRD: Mr Speaker, my question is to the Minister for Business, Tourism and the Arts, Mr Smyth. Minister, in the *Canberra Times* recently a Labor candidate in Brindabella, a Mr Athol Williams, claimed that the ACT retail sector was "somewhat recessed". Minister, can you tell the parliament whether there is any evidence to support this claim by a senior unionist and also a candidate for the forthcoming ACT elections.

Mr Humphries: He didn't speak for the party!

MR SMYTH: Mr Speaker, I guess it does raise the question—

Mr Stanhope: Give us your definition of "agreement", Gary. Tell us again what "agreement" means.

MR SPEAKER: Order! I warn you, Mr Stanhope. That is four of you.

MR SMYTH: Mr Speaker, it would not come as a surprise to many people that while one candidate is busily announcing what it is that the opposition is doing or not doing, we have Mr Stanhope denying that anybody is saying anything at all.

The Labor Party under its new leader, Mr Stanhope, said that essentially it would be accountable to the people and work cooperatively, constructively and with mutual respect for each other. One would have to assume that that would mean being straight with the people of Canberra. I was somewhat surprised to read the recent comments in the *Canberra Times* attributed to Labor candidate, Athol Williams, as they certainly fly in the face of all the evidence—but then, when has the Labor Party ever let the facts stand in the way of a good story?

Mr Speaker, it is hardly surprising that while one candidate is busily announcing Labor policy on the run and throwing money at voters—despite the express views of his leader, Mr Stanhope, that that would not occur—another candidate is making comments that fly in the face of the facts and fly in the face of reality. That is the new face of Labor—it would appear to be two-faced.

Mr Williams claimed that anecdotal evidence showed that the ACT retail sector was recessed and that this flew in the face of reported high business confidence, thereby casting doubt on the level of that confidence. The business confidence he is referring to is the ACT Chamber of Commerce and Industry's quarterly business expectation survey which recorded high business confidence in the ACT, with increases in wage rates and employment levels. The chamber surveyed some 200 members, covering small and big business, to get these results.

The results come after and in fact reinforce a recent Australian Bureau of Statistics report that the retail trade in the ACT had increased by an incredible 13.9 per cent in the year to December. Again, we all know that the ABS is the leading national body for collecting statistical data. But no, Labor's Mr Williams says he is the expert and that in fact Canberra is in recession. I am surprised he did not quote a former Labor Prime Minister and say that it is the recession that we had to have.

But seriously—and, indeed, a recession is a serious business—are we in fact in a recession? The generally accepted definition of recession is two consecutive quarters of negative growth. The ACT, as Mr Stanhope and all his candidates and those opposite should well know, is not in recession. For the record, the ACT has not experienced a recession since two consecutive quarters of negative growth were experienced in March and June 1995. In fact, our state final demand growth has been outstripping the nation by more than double.

In the recent business confidence survey that I mentioned earlier, 74 per cent of businesses surveyed said that the ACT economy would remain at its current rate or continue to strengthen, with 27 of those expecting that ACT general business conditions to improve. Over half of the respondents had experienced a rise in sales revenue, 24 per cent had experienced a rise in profit levels and 30 per cent expected their profit levels to increase and one-third expected them to remain unaltered—hardly a recession.

The ABS retail trade figures showed that the trend retail trade turnover in the ACT had increased by 0.8 per cent to $262.6 million during December 2000, well above its level at the same time in the previous year—in fact, up almost 14 per cent. Over the 12 months ending December 2000, the ACT experienced the highest trend growth in retail sales of any state or territory and about double the next largest growth recorded in South Australia.

You then have to add this to other indicators like the Morgan and Banks job index, which is based on a survey of 6,800 employers across Australia. I think the headline on its press release was "ACT on the boil: hardly a recession". It said that employers in the ACT are experiencing confidence with 43.5 per cent intending to increase staff in the next quarter and 7.7 per cent predicting decreases, giving a net effect of 35.8 per cent. This highlights the positive attitude of medium-sized organisations as well as small businesses continuing their high levels of confidence in the ACT. This is hardly the picture of the gloom and doom that the Labor Party has traditionally put forward and will no doubt continue to put forward in the lead-up to the election.

MR HIRD: I am delighted. I ask a supplementary question. Minister, Mr Athol Williams also claimed that because trade was recessed retailers were not putting on new employees. Can the minister again tell the parliament whether there is any evidence to support this claim, or is it simply that foot-and-mouth disease has been caught by Labor candidates for Brindabella?

Mr Corbell: I take a point of order, Mr Speaker. It is a new question. It is certainly not a supplementary question.

MR SPEAKER: It is part of the same statement, but the tail rhetoric can be dispensed with.

MR SMYTH: It is another curious truth from Labor that employers are not hiring and are cutting existing staff's hours.

Mr Berry: I take a point of order, Mr Speaker. You ought to rule out that part of the question which refers to the Labor Party. That Mr Smyth is responsible for the Labor Party is as far from the truth as you can get.

MR SPEAKER: Sit down. There is no point of order.

MR SMYTH: Again, what do other experts, apart from Mr Williams, say? The ABS says our employment rate is still the lowest in the country and at one of the lowest levels the ACT has ever experienced, at 4.8 per cent.

Mr Stanhope: It always has been.

MR SMYTH: It wasn't under you lot. The Chamber of Commerce business confidence survey showed employment levels remaining high, with almost 30 per cent of business putting on new staff in the November quarter and 23 per cent expecting to do so in the following quarter. The Morgan and Banks job index shows that a net 35.8 per cent of employers intend to increase staff—a record high for the ACT and well up on the 29.1 per cent recorded in the previous survey. It is the highest percentage of all states and territories and also above the national average of 29.8 per cent. The Australian executive job market expanded by 19 per cent in the two months of December and January, according to the EL index. Executive Leasing Australia, the company that compiles the data, highlighted that the ACT was experiencing a rise in private sector demand.

But we cannot realistically expect this to continue. The economy is showing signs of slowing, as we would expect, and, with that, job growth will not be as significant. The unemployment rate is no longer at the record low of 4.5 per cent.

The Yellow Pages business index showed that 11 per cent of businesses expected to increase their work force size, while the ANZ job advertisements series predicts that its record highs in the number of job ads will also fall. Their latest figures showed that, in trend terms, it was still a very good story, however, with latest job ads in January 2000 in the ACT unchanged at 559, up 7.5 per cent on the same time last year.

Mr Williams and Labor are wrong. We still have it pretty good. I am not saying that business is going great guns and is without hard times, but the majority certainly are. It is a bit rich for the Labor Party to think they can hoodwink Canberrans into believing that this is a recession. Canberrans know what a recession is. They know how tough it can get. They have spent the past decade slogging it out to recover from the real one that Labor told us we had to have. So I call on Mr Stanhope to stop treating the electorate with such contempt and take responsibility and be accountable for his candidates, representatives of Labor Party and its leader, as they are Labor's endorsement of people Canberrans should vote into government.

Payroll advertising—Australian Nursing Federation

MR BERRY: My question is to the Chief Minister. The Chief Minister yesterday in the Assembly supported a motion rejecting the government's refusal to allow the ANF to advertise in ACT government pay slips. I should draw to the Assembly's attention that the union is in a flexible mood in relation to this matter. It has addressed the issue which seemed to cause Mr Humphries so much concern, and they have agreed to withdraw from their ad or, alternatively, making a contribution to our campaign. They were troubled that he was so unsettled by contentious remarks that they decided to withdraw them. In today's *Canberra Times* the minister's office is quoted as saying:

> The Assembly can express its disapproval until it's blue in the face.

I ask the minister: will he repudiate that statement unequivocally, and will he advise the Assembly whether Mr Tonkin has reversed his decision?

MR HUMPHRIES: In answer to the second part of that question, I do not know whether Mr Tonkin has yet received this request from the nurses federation. I have just had supplied to me a copy of a letter from the nurses federation to me. I do not know whether Mr Tonkin has seen it or not. I am sure that when Mr Tonkin does he will consider a revised form of advertisement which the nurses have submitted for placement on government payroll slips. Since they have taken out those offending words, it may be more eligible for inclusion.

As far as the first statement is concerned, we have very clearly established ways in this place, by convention built up over the 11 years this place has been in existence—

Mr Berry: Will you repudiate it?

MR HUMPHRIES: Listen and you will hear something, Mr Berry. Over the last 11—in fact, nearly 12—years we have built up very clear conventions about the way in which this Assembly works. We have a clear distinction in this place between the Assembly expressing a view about something and the Assembly instructing the government in such a way that the government faces consequences if it fails to act in the way the Assembly has indicated.

An example of such an instruction to the government was the motion which was put, although not debated in the end, instructing the government to convene an inquiry, under the Inquiries Act, into disability services in the ACT. That is the sort of instruction the government ignores at its peril. But yesterday the motion you moved expressed the Assembly's disapproval of what the government—

Mr Berry: It rejected it.

MR HUMPHRIES: All right, you rejected the government's decision. If the nurses have put forward a different formula to include in the government's pay slips, then Mr Tonkin, not I, will consider that as appropriate and make a decision in accordance with the guidelines. If the Assembly, however, disagrees so violently with the decision that he makes as to believe it cannot live with that decision, then the answer is for the Assembly to pass a resolution instructing the government to include certain things in the pay slip if that is what you want.

Mr Berry: Would you like to do it now?

MR HUMPHRIES: It is up to you, Mr Berry. There is a well-established way to make the Assembly pass resolutions to compel the government to act. You have been here as long I have. You know how those things work. If you want to make the government do something, then you move the motion in the appropriate way.

MR BERRY: I have a supplementary. If you are absolutely certain there is no agreement by Mr Tonkin to reverse his decision, will you instruct him to reverse his decision?

MR HUMPHRIES: Mr Speaker, I have just explained. I have only just received the letter, just this last moment, from the ANF. In any case, I am not going to instruct him to do anything I haven't read.

Mr Quinlan: He did it yesterday/

MR SPEAKER: Be quiet.

MR HUMPHRIES: He didn't do it. This letter only came in today; it didn't come in yesterday. At least, I hadn't seen it until today. It is dated 1 March. Unless Ms Duff had a premonition yesterday that this was going to happen today and she dated it today, then I hadn't seen it before today and she didn't write it before today.

I am not going to instruct Mr Tonkin to do anything. The guidelines make it clear what it is that he has to do in respect of the way in which these matters work. I will leave that decision to Mr Tonkin.

Mr Berry: Ignore what the Assembly said yesterday.

MR HUMPHRIES: No, I am not going to ignore what the Assembly said yesterday. The Assembly expressed its disapproval—

Mr Berry: Until it is blue in the face, we can do that, can we?

MR SPEAKER: Order! Will you be quiet, Mr Berry.

MR HUMPHRIES: If you want to make the government blue in the face you know exactly what to do. And you knew what to do before you moved your motion yesterday. I suggest you act accordingly. It is well established that not every motion in this Assembly is a directive to the government. You know that; I know that; everyone else knows that.

Mr Berry: If you don't follow that, what about a censure motion? Would you cop that?

MR SPEAKER: I warn you, Mr Berry. This is something of a record. We now have all six of you warned. By the way, I remind you that this warning applies for the rest of this day.

Mr Berry: Under what part of the standing orders?

MR SPEAKER: Constant interjections.

Mr Berry: From what part of the standing orders do you draw a conclusion that you can warn anybody?

MR SPEAKER: Standing order 202—persistently and wilfully obstructed the business of the Assembly; guilty of disorderly conduct; persistently and wilfully refused to conform to any standing order; persistently and wilfully disregarded the authority of the chair. That is four out of five.

Mr Berry: I was looking for the one with the letter "w" in front of it.

MR SPEAKER: Chief Minister, would you like to conclude.

MR HUMPHRIES: Yes, Mr Speaker. If you want to move a censure motion, Mr Berry, feel free. You have done that a lot of times before. We haven't had a censure motion for at least four months. It is probably time we had another one.

I will continue to put the government's position very clearly. We have said we believe that it is appropriately a matter for the public service to decide what goes on pay slips. I do not sit down at my desk each day to decide what words should go on the bottom of pay slips; nor would you or any of your colleagues have done so while ever you were in government. And you know it.

I will leave that decision to the public service. I am sure they will be cognisant of the views expressed by the Assembly, but I will not be instructing them to take a different view because what they have done is in accordance with the guidelines which have been established and in force for some time. If the Assembly directs the government otherwise, then, of course, I will act on it.

Security cameras—tender

MR RUGENDYKE: My question is also directed to the Chief Minister. I refer the minister to the tender process for the security cameras for Civic. I understand that a Melbourne company won that tender. Did that company meet all selection criteria to satisfy the tender or was the tender document altered to suit the successful company?

MR SMYTH: Mr Speaker, I might take that question. The security cameras are now under my control. I will have to seek that detail for the member.

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

Personal explanation

MR BERRY: I ask for leave to make a statement pursuant to standing order 46.

MR SPEAKER: Yes, proceed.

MR BERRY: Mr Speaker, by way of background, my statement is in relation to a question asked by Mr Osborne during question time and taken on notice by Mr Smyth. Mr Osborne asked a question about disabled parking. I have a letter from the then Chief Minister in relation to this matter. It reads as follows:

> I refer to your letter of 16 June 2000 regarding parking for people with disabilities at Bruce Stadium.

A disabled sticker—

MR SPEAKER: This is not a personal explanation at all.

MR BERRY: Mr Speaker, will you wait until I am finished?

MR SPEAKER: No, I will not. This is not a personal explanation. Use the adjournment debate.

MR BERRY: Mr Speaker, I am happy to seek leave to table the letter, for Mr Smyth's information.

Leave granted.

MR BERRY: I present the following paper:

Parking for people with disabilities at Bruce Stadium—Copy of letter from Kate Carnell MLA, Chief Minister to Mr Wayne Berry MLA, dated 6 July 2000.

MR SPEAKER: Then table it. Thank you, but it is not a personal explanation.

MR BERRY: I thought it was personal when I took it up with the constituent who raised the issue. Basically, Mr Speaker—

MR SPEAKER: There is no personal explanation.

MR BERRY: I personally raised this issue with the then Chief Minister. She told me personally that they remained free parking. Mr Smyth does not seem to know that.

MR SPEAKER: Sit down or I will name you.

Questions without notice

Special needs students

MR STEFANIAK: Yesterday in answer to a question by Mr Rugendyke about transport for special needs students—and I am looking at the transcript—I said I would get back to him if the information was different. By way of elaboration on funding that went to mainstream schools for excursions for disabled kids, there was, in fact, a grant that was provided to learning support units in mainstream schools, to cover the cost of planned excursions.

We have some 15 government schools that have learning support units and the students enrolled in those units are those who would also be eligible for enrolment in special schools. It is a fact that this funding goes to them in those special needs units in the mainstream schools.

North Ainslie autism unit

MR STEFANIAK: In relation to Mr Wood's question on autism, my department has made no change to the staffing allocation of the North Ainslie Primary School autism unit, which is a unit of two children, staffed by a full-time teacher and a full-time special teachers assistant. In addition, the department actually pays for a consultant from Sydney to visit the unit each term.

It is my understanding that Fabric has provided some additional support to the unit. That is an arrangement made between parents and Fabric. I understand that there may have been some reduction in that support. My colleague, Mr Moore, wants to look into that and, if need be, either he or I will provide Mr Wood with further information on that point next week.

Papers

Mr Humphries presented the following papers:

> Ministerial Travel Report for 1 October to 31 December 2000.
>
> Financial Management Act, pursuant to subsection 26 (4)—Consolidated Financial Management Report for the month and financial year to date ending 31 January 2001.

Mr Smyth presented the following papers:

> Canberra Tourism and Events Corporation Act, pursuant to subsection 23 (8)—Canberra Tourism and Events Corporation—Business Plan for 2000-2004.
>
> Cultural Facilities Corporation Act, pursuant to subsection 29 (3)—Cultural Facilities Corporation—Quarterly report for the second quarter of 2000/2001: 1 October to 31 December 2000.
>
> Land (Planning and Environment) Act, pursuant to section 29—Variation (No 166) to the Territory Plan relating to the Lower Molonglo Water Quality Control Centre, together with background papers and a copy of the summaries and reports.

Planning and Urban Services—Standing Committee

Report on Tuggeranong lakeshore master plan—government response

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (3.34): For the information of members, I present the following paper:

> Tuggeranong Lakeshore Master Plan *(presented 30 November 2000)*—Government Planning and Urban Services—Standing Committee—Report No 60—response.

Mr Speaker, today I table the government's response to the Assembly's Standing Committee on Planning and Urban Services inquiry report No 60, November 2000, into the Tuggeranong lakeshore master plan. Mr Speaker, Planning and Land Management

prepared the master plan in 1999 as a vision and development strategy for the future of the Lake Tuggeranong environs and part of the town centre proper. The master plan is not a detailed development control plan. The suggested development proposals require further detailed assessment and may require a variation to the Territory Plan before they can be realised.

The Assembly referred the master plan to the Standing Committee on Planning and Urban Services in 1999 for consideration. The committee's report was released in November 2000. The government thanks the committee for its inquiry and the subsequent report.

The committee recommended that the government outlines the process of master planning for an area, including the consultative mechanisms, recording processes and suggested time frames. I am pleased to say that the government has already responded to this recommendation in draft variation No 155 to the Territory Plan. The consultation report and recommended final variation No 155 are currently with the committee for its consideration.

The committee also suggested that members of the Legislative Assembly could play a more useful role in the master plan process, with their local knowledge. I agree. Planning and Land Management will actively seek their involvement in the preparation of future master plans, where appropriate.

The government has withdrawn five of the master plan's proposals relating to the development of urban open space. This is consistent with the Chief Minister's commitment on 18 November 2000 that there would be no further development of Territory Plan-designated urban open space, with the possible exceptions of the areas around Griffith local centre and the Yarralumla Brickworks. I am pleased to see that the committee has endorsed the government's undertaking.

In response to the committee's comments about the master plan's proposal for residential development on land adjacent to Drakeford Drive, designated as for entertainment, accommodation and leisure by the Territory Plan, the government has decided to withdraw this proposal. The current Territory Plan provisions will remain unchanged.

I am pleased to see that the remainder of the master plan's development proposals have either been supported, or supported subject to conditions, by the committee. The government notes and accepts these recommendations. The master plan will be revised in accordance with the government's response to the committee's report. I move:

> That the Assembly takes note of the paper.

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

National Environment Protection Council Report
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) (3.38): Mr Speaker, for the information of members, I present the following paper:

National Environment Protection Council—Report and financial statements, including the Australian National Audit Office Report, for 1999-2000.

I ask for leave to make a short statement.

Leave granted.

MR SMYTH: Under the National Environment Protection Act 1994, the government is required to table National Environment Protection Council (known as NEPC) annual reports within seven sitting days of the council's adoption of the report. The 1999-2000 NEPC annual report was adopted by the council at its meeting on 15 December 2000. The report covers the activities of the council, the operation of the service corporation that supports the council, and the implementation and effectiveness of national environment protection measures, or NEPMs.

In 1999-2000 year, NEPC finalised two National Environment Protection Measures. These related to guidelines for the assessment of contaminated sites and management of used packaging materials. The National Pollutant Inventory was varied to give industry an additional year to report on emissions to the environment. The substances to be reported are nominated in a comprehensive list in the NEPM. This extension will enable industry and governments to refine their emissions reporting systems.

Further development work was undertaken on emissions from diesel vehicles, with a view to developing a NEPM in the 2000-2001 year, in conjunction with the National Road Transport Commission, or NRTC.

The council also developed advice to the federal government on vehicle fuel quality requirements, through the Motor Vehicle Environment Committee, in partnership with the NRTC. Other activities included ongoing support for the development of the air monitoring plans for each of the major Australian cities, under the Ambient Air Quality NEPM, and consideration of risk assessment approaches to establishing and reviewing air quality standards.

The issue of ambient air quality is of particular interest to members of the Assembly. Members may wish to note that there was limited reporting from the ACT on the implementation of this measure, as the 1999-2000 report on ambient air quality is an interim one. The first formal report will be prepared for the 2000-2001 annual report.

The ACT did meet the air quality goal set for this measure for the pollutants that were reported on. Sulphur dioxide is not measured in the ACT, as there is no local source of emissions of this chemical. Lead and particulate matter were measured, but the data were not available at the time of reporting. Data now to hand show that the lead levels in the ACT are less than 20 per cent of the measure's standard, and the goal for particulate matter was met, although the standard was exceeded on several days in winter when climatic conditions trapped smoke from wood fires.

The ACT met all of its requirements for the National Environment Protection Council's 1999-2000 annual report.

Legislation (Access and Operation) Bill 2000
Detail stage

Debate resumed.

Clause 45 agreed to.

Clause 46.

MR STEFANIAK (Minister for Education and Attorney-General) (3.42): The opposition to clause 46 is in response, Mr Stanhope, to the scrutiny committee's concerns that it may not be appropriate to authorise a statutory instrument to provide a full reconsideration or review of a decision made under the instrument, or the act under which the statutory instrument is enforced.

Clause negatived.

Clause 47 agreed to.

Proposed new clauses 47A to 47D.

MR STEFANIAK (Minister for Education and Attorney-General) (3.43): I move amendment No 14 circulated in my name *[see schedule 1 at page 523]*.

Proposed new clauses 47A to 47D agreed to.

Clauses 48 to 50, by leave, taken together and agreed to.

Proposed new clause 50A.

MR STEFANIAK (Minister for Education and Attorney-General) (3.44): Mr Speaker, I move amendment No 15, circulated in my name, which proposes a new clause 50A *[see schedule 1 at page 523]*.

Although the bill does not directly require a subordinate law, disallowable instrument or notifiable instrument—a registrable instrument to be notified under the bill—it is implicit in clause 61 (2) that the registered instrument cannot commence unless it is notified.

However, the application of clause 61 (2) to the text of applied laws and instruments is unclear—see the proposed amendments to 39 (2) and (3), which we have already done. This amendment, therefore, inserts a new clause 50A that provides that a registrable instrument, which will include the text of applied rules and instruments, is not enforceable by or against the territory, or anyone else, unless if notified. The clause is modelled on a similar provision in the Commonwealth Legislative Instruments Bill 1996.

Proposed new clause 50A agreed to.

Clauses 51 to 60, by leave, taken together and agreed to.

Clause 61.

MR STEFANIAK (Minister for Education and Attorney-General) (3.45): Mr Speaker, I seek leave to move together amendments Nos 16 and 17 circulated in my name.

Leave granted.

MR STEFANIAK: I move together amendments Nos 16 and 17 circulated in my name *[see schedule 1 at page 523]*. These two amendments to clause 61 (1) and 61 (2) have been redrafted to correct minor syntax errors and recognise, in clause 61 (1) (b), that an act may provide a later commencement for a registrable instrument. Examples have also been included for clause 61 (1) (b).

In relation to amendment 17, clause 61 (4) has been redrafted to correct minor syntactic errors and recognise, in clause 61 (4) (b), that an act may provide a later commencement for a statutory instrument that is not a registrable instrument.

Amendments agreed to.

Clause 61, as amended, agreed to.

Clauses 62 to 78, by leave, taken together and agreed to.

Clause 79.

MR STEFANIAK (Minister for Education and Attorney-General) (3.47): I move amendment No 18 circulated in my name *[see schedule 1 at page 523]*.

This amendment, Mr Speaker, applies clause 79, which covers insertion of provisions by amending law, to the relocation of provisions as well.

Amendment agreed to.

Clause 79, as amended, agreed to.

Clauses 80 and 81, by leave, taken together and agreed to.

Clause 82.

MR STEFANIAK (Minister for Education and Attorney-General) (3.48): Mr Speaker, I move amendment No 19 circulated in my name *[see schedule 1 at page 523]*.

Amendment No 19 amends clause 82 and makes it clear that, if a law authorises or requires the making of an appointment or statutory instrument by an entity and the law is amended, an appointment or statutory instrument made under the amended law continues under the amended law, whether the appointment or instrument may be made under the amended law by the same entity or a different entity.

Amendment agreed to.

Clause 82, as amended, agreed to.

Clauses 83 to 89, by leave, taken together and agreed to.

Clause 90.

MR STEFANIAK (Minister for Education and Attorney-General) (3.49): I move amendment No 20 circulated in my name *[see schedule 1 at page 523]*.

Mr Speaker, amendment No 20 inserts a new subclause to provide that clause 90, meaning of references to a law or instrument generally, applies except so far as the contrary intention appears. A contrary intention could exist if, for example, construing a reference to an applied statutory instrument, as meaning the instrument as in force from time to time, would contravene clause 39 (1).

Amendment agreed to.

Clause 90, as amended, agreed to.

Clause 91 agreed to.

Clause 92.

MR STEFANIAK (Minister for Education and Attorney-General) (3.50): I move amendment No 21 circulated in my name *[see schedule 1 at page 523]*.

This amendment inserts a new subclause to make it clear that a reference to an act, statutory instrument or provision includes a reference to the laws and instruments applied, adopted or incorporated under the act, statutory instrument or provision, as permitted by clause 39.

Amendment agreed to.

Clause 92, as amended, agreed to.

Clause 93.

MR STEFANIAK (Minister for Education and Attorney-General) (3.51): I move amendment No 22 circulated in my name *[see schedule 1 at page 523]*.

This amendment inserts a new subclause to provide that clause 93, references and statutory instruments to the act, applies except so far as a contrary intention appears. Although rare, there are cases where references in a statutory instrument to "the act" are references to an act other than the act under which the instrument is made or enforced. For example, the workers compensation laws are enforced under the Magistrates Court Civil Jurisdiction Act 1982, that makes provision for proceedings under the Workers' Compensation Act 1951.

Amendment agreed to.

Clause 93, as amended, agreed to.

Clauses 94 to 103, by leave, taken together and agreed to.

Clause 104.

MR STEFANIAK (Minister for Education and Attorney-General) (3.52): I thought Mr Stanhope might bounce up on this one, because both Mr Stanhope's amendment and my amendment to this clause are the same. I move amendment No 23 circulated in my name, and indeed in Mr Stanhope's too *[see schedule 1 at page 523]*.

Amendment agreed to.

Clause 104, as amended, agreed to.

Clauses 105 and 106, by leave, taken together and agreed to.

Clause 107.

MR STANHOPE (Leader of the Opposition) (3.53): In relation to the previous matter and by way of explanation, as Mr Stefaniak indicated, I did speak to each of these matters in the in-principle debate, and drew attention to some concerns the Labor Party had about a proposal that acts would be amended by the Parliamentary Counsel's Office in relation to a range of matters that may have been prescribed in regulations. We have just actually removed that possibility. The Attorney has moved an amendment that mirrored one I had foreshadowed, and so we are pleased to see that happen.

I am thinking aloud here now. The amendment that I have now proposed, my amendment No 7, is similar to the proposal that you, Mr Attorney, have made in relation to this. My amendment would prevent the Parliamentary Counsel from delegating his power to make editorial changes to law to a public servant. I think, just from memory—I am just trying to catch up—your amendment, Mr Attorney, actually allows him to delegate it just to his deputy.

MR STEFANIAK (Minister for Education and Attorney-General) (3.54): To help Mr Stanhope out, Mr Speaker, my amendment enables Parliamentary Counsel to delegate his power under that part to a deputy parliamentary counsel. Obviously, the Parliamentary Counsel might be sick, might not be able to do it and—

Mr Stanhope: I will not proceed with my amendment, Mr Speaker.

MR SPEAKER: Thank you.

MR STEFANIAK: I thank Mr Stanhope for that. In that case, Mr Speaker, I move amendment No 24 circulated in my name, which I indicated enables the Parliamentary Counsel to delegate his powers to a deputy parliamentary counsel, which I think is most appropriate *[see schedule 1 at page 523]*.

Amendment agreed to.

Clause 107, as amended, agreed to.

Clauses 108 to 110, by leave, taken together and agreed to.

Clause 111.

MR STEFANIAK (Minister for Education and Attorney-General) (3.56): Mr Speaker, I move amendment No 25 circulated in my name *[see schedule 1 at page 523]*.

Mr Speaker, clause 111 (1) has been extended to provide that proposed section 50A does not apply to registrable instruments made and notified in the gazette before the commencement of the clause. Clause 111 (2) provides that section 50 and section 50A, as it now is, do not apply to any registrable instruments made before the commencement of a clause that were not required to be published or notified in the gazette.

Amendment agreed to.

Clause 111, as amended, agreed to.

Remainder of bill, by leave, taken as a whole.

MR STEFANIAK (Minister for Education and Attorney-General) (3.57): I seek leave to move together amendments No 26 and 27 circulated in my name.

Leave granted.

MR STEFANIAK: I move together amendments Nos 26 and 27 circulated in my name *[see schedule 1 at page 523]*. Those amendments are consequential on amendment No 4.

Amendments agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (3.57): I move amendment No 28 circulated in my name *[see schedule 1 at page 523]*. That amendment is consequential on amendment 14.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (3.58): Mr Speaker, I move amendment No 29 circulated in my name *[see schedule 1 at page 523]*. That amendment is consequential on amendment 4.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (3.58): Mr Speaker, I move amendment No 30 circulated in my name *[see schedule 1 at page 523]*. This amendment is consequential on amendment 14.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (3.59): Mr Speaker, I move amendment No 31 circulated in my name *[see schedule 1 at page 523]*. This amendment is consequential on amendments 4 and 14.

Amendment agreed to.

Remainder of bill, as a whole, as amended, agreed to.

Bill, as amended, agreed to.

Legislation (Access and Operation) (Consequential Provisions) Bill 2000

Debate resumed from 27 February 2001, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 4, by leave, taken together.

Mr Moore: On a point of order, Mr Speaker: it may be necessary to invoke standing order 43, which I cannot remember being invoked in this Assembly before, considering Mr Stefaniak's concern about the fact that he has to be up and down so much. Shall I remind you of standing order 43, Mr Speaker?

MR SPEAKER: Sickness or infirmity? I am not sure that would apply to Mr Stefaniak.

Mr Moore: It is the indulgence. Perhaps you could read standing order 43 for the members who are not aware of it, Mr Speaker, as it has not been used, from my recollection.

MR STEFANIAK (Minister for Education and Attorney-General) (4.00): I am just trying to see if I have amendments to this, Mr Speaker. Bear with me.

MR SPEAKER: Yes, it is here somewhere.

MR STEFANIAK: I seek leave to move together amendments 1 to 4 circulated in my name.

Leave granted.

MR STEFANIAK: I move amendments 1 to 4 circulated in my name *[see schedule 3 at page 540]*.

Amendments agreed to.

Clauses 1 to 4, as amended, agreed to.

Schedule 1.

MR STEFANIAK (Minister for Education and Attorney-General) (4.00): I move amendment No 5 circulated in my name *[see schedule 3 at page 540]*.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.01): I move amendment No 6 circulated in my name *[see schedule 3 at page 540]*.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.02): Mr Speaker, I seek leave to move together amendments Nos 7 to 10 circulated in my name.

Leave granted.

MR STEFANIAK: I move together amendments Nos 7 to 10 circulated in my name *[see schedule 3 at page 540]*.

Amendments agreed to.

MR SPEAKER: Order! Settle down, please. We are moving through this at a reasonable pace.

MR STEFANIAK (Minister for Education and Attorney-General) (4.03): I move amendment No 11 circulated in my name *[see schedule 3 at page 540]*.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.03): I ask for leave to move together amendments Nos 12 to 17 circulated in my name.

Leave granted.

MR SPEAKER: Mr Stefaniak, move the amendments, please.

MR STEFANIAK: I move amendments Nos 12 to 17 circulated in my name *[see schedule 3 at page 540]*.

MR STANHOPE (Leader of the Opposition) (4.04): The Labor Party looked at this bill and these amendments with some care, and put some effort into arriving at our position. However, with great respect, minister, we would find it useful if you would actually show the Assembly some courtesy—if you can find your notes, or if you have an official there somewhere who could give you another set—by just letting us know what the amendments are. I think it would assist the record. Do you have another set? Have you lost your notes, Bill? Could you just tell us what you are doing?

MR STEFANIAK (Minister for Education and Attorney-General) (4.04): Well, if Mr Stanhope wants to know, these particular amendments omit access and operation in each instance.

Amendments agreed to.

Schedule 1, as amended, agreed to.

Title.

MR STEFANIAK (Minister for Education and Attorney-General) (4.05): I move amendment No 18 circulated in my name, which again omits access and operation *[see schedule 3 at page 540]*.

Amendment agreed to.

Title, as amended, agreed to.

Bill, as amended, agreed to.

Unit Titles Bill 2000

[Cognate bill:
Unit Titles Consequential Amendments Bill 2000]

Debate resumed from 30 November 2000, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this bill concurrently with the Unit Titles Consequential Amendments Bill 2000? There being no objection, we will follow that course. I remind members debating executive business order of the day No 4 that they may also address their remarks to executive business order of the day No 5.

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

> That the debate be adjourned.

Mr Smyth: Mr Speaker, it would appear that the Unit Titles Bill and the leases bill are connected.

MR SPEAKER: This is not open to debate. Just a moment. Is leave granted for the minister to speak, please?

Leave granted.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services): Mr Speaker, my office was approached by Mr Corbell's office, seeking to adjourn this, and we have indicated that our preference would be to do this first. Unit Titles needs to be passed because of—

MR SPEAKER: Order! Can we have a little bit of shush, please. The lobbies are provided for people to use in these circumstances, so please use them.

MR SMYTH: They are probably discussing what I am about to reveal. There are references in the leases bill, which would come on after this, that are dependent upon the passing of the Unit Titles Bill. That is why the government is keen to do the Unit Titles Bill now. If the Unit Titles Bill is to be adjourned today, it would therefore be appropriate to also adjourn the leases debate, as one is dependent upon the other. I think that that is what is being negotiated at the end of the chamber at this stage. If the Labor Party is to move an adjournment to the Unit Titles Bill, then we will also ask them to adjourn the leases legislation as well.

MR STANHOPE (Leader of the Opposition): I seek leave to speak.

Leave granted.

MR STANHOPE: Just to respond to the minister, it would be the Labor Party's desire, as my colleague has indicated, for the unit titles debate to be adjourned. Mr Corbell has actually moved that. We are quite content with that. As I understand it, the minister will be prepared. The Labor Party is ready to proceed on the leases bill today, but we are happy, in light of the comments that the minister has just made, to deal with the leases bill next Tuesday, if that would be generally more agreeable.

Mr Smyth: The leases bill? Unit titles first, leases second.

MR STANHOPE: Yes, I am just following on from the point that the minister has just made, that the minister's position is that, if the unit titles debate is to be adjourned until next Tuesday, that leases should be adjourned as well. I am just acknowledging that it is our preference for unit titles to be adjourned and, in that circumstance, we will, of course, accept that the leases debate be adjourned.

MR SPEAKER: Is leave also granted for Mr Rugendyke to speak?

Leave granted.

MR RUGENDYKE: Mr Speaker, I would urge members to at least consider debating the Leases (Commercial and Retail) Bill to the in-principle stage. That would give support staff, secretariat staff and other interested people the capacity to understand where all members stand in this debate, making the amendment debate much more reasonable and easier to do next week. So I would urge members to take this to the in-principle stage.

Question resolved in the affirmative.

Debate adjourned to the next sitting.

Unit Titles Consequential Amendments Bill 2000

Debate resumed from 30 November 2000, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

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

Consideration of private members business
Suspension of standing and temporary orders

MR MOORE (Minister for Health, Housing and Community Services) (4.11): Before I move for the suspension of standing orders I would like to acknowledge the presence of my daughter in the gallery. She has not been to a sitting before.

Mr Speaker, I move:

> That so much of the standing orders be suspended as would prevent order of the day No 15, private Members' business relating to the Leases (Commercial and Retail) Bill 2000 being called on immediately after the resolution of any question relating to the conclusion of consideration of order of the day No 6, Executive business relating to the Leases (Commercial and Retail) Bill 2000 [No 2].

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

Leases (Commercial and Retail) Bill 2000 [No 2]
[Cognate bill:
Leases (Commercial and Retail) Bill 2000]

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

> That this bill be agreed to in principle

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Leases (Commercial and Retail) Bill 2000? There being no objection, that course will be followed. I remind members that in debating executive business order of the day No 6 they may also address their remarks to private members business order of the day No 15.

MR STANHOPE (Leader of the Opposition) (4.12): Mr Speaker, the Assembly has before it two bills on the important issue of leasing business premises. I probably should say at the outset—and I will say it now to get it out of the way—that having regard to the very significant position of principle which the Liberal Party and others have taken in this place about conflicts of interest, particularly at a time when we are having a debate in relation to gaming or licensed clubs and the position of the Labor Party in that circumstance, having regard to our association with the Labor Club, it needs to be pointed out that the Liberal Party acquires or achieves most of its income here in the ACT as a consequence of its position as a landlord. I believe two-thirds of the Liberal

Party's revenues in the ACT are the proceeds of rent from the tenants of its premises. The rest of its proceeds of course are donations it receives in its secret 250 Club.

So there is a significant conflict of interest here for the Liberals. One has to ask whether they should be participating in this debate at all. There is a question about whether or not it is appropriate for the Liberal Party to introduce this legislation, having regard to the conflict of interest position which the Liberal Party insists that the Labor Party should be taking in relation to licensed clubs and gaming.

Mr Stefaniak: It has never worried you in the licensed clubs debate.

MR STANHOPE: It is not we who have put this position of principle, Attorney. It is you and your party that put it ad nauseam, time and time again. Now that we are debating the Leases (Commercial and Retail) Bill, we must acknowledge that the Liberal Party in the ACT receives at least two-thirds of its funds from tenants who rent its premises, so members of the Liberal Party, if they are not to be hypocrites, should not be participating in the debate.

Over and above that, having regard to the position put by the Liberal Party and other members of this place in relation to the proceeds of gaming and the position put by those principled people on the other side of this place that the Labor Party, as a result of its receipt of funds from gaming, should donate to charity an amount equal to its receipts from gaming in the ACT—I am sure you all remember that debate and I am sure you all remember imposing on the Labor Party and the Labor Club the penalty that we have to donate to charity, dollar for dollar, amounts received by the Labor Party from gaming—I expect somebody on the other side, perhaps Mr Rugendyke, Mr Osborne or Mr Moore, to move an amendment that the Liberal Party donate to charity a dollar for every dollar it receives from rent, if the Liberal Party and those who support them in the matter are not to be seen for the utter hypocrites that they are. Having got that out of the way, we will now proceed. The Labor Party can debate this matter with a clear conscience.

The bills we are discussing today go to the heart of our economic wellbeing, as they do more than just govern the relationship between lessors and tenants. These laws will also be used by corporate investors to determine whether or not to invest in commercial property in the ACT and by others to determine whether or not they can afford to start a small business in a commercial property owned by someone else.

If the balance is tipped too far in favour of the tenant, corporate owners may decide to invest elsewhere. If the balance is tipped too far in favour of the lessor, prospective tenants may decide the terms and conditions are too restrictive for them. It is important that serious efforts be made to strike the right balance.

The Attorney-General presented this bill on 18 October 2000 after a gestation period of more than five years. Mr Rugendyke presented his private members bill on the same topic in May last year. Mr Rugendyke, in presenting his bill, said that it had been a year in the making, but the Assembly was not informed what consultation had been carried out.

The government bill has been through an exhaustive process. When he was minister for fair trading, Mr Humphries announced in December 1995 a review of the Tenancy Tribunal Act 1994 and the commercial and retail leases code of practice by a working party made up of representatives of landlords, tenants and interested parties.

The working party reported in November 1997 with 84 recommendations. The government responded to that report in August 1998. An exposure draft of a bill was released in December 1998. The exposure draft was widely criticised, so the Law Society, we thought as honest broker—and I think many of us had hopes that the results of the Law Society's intercession would have been slightly more productive than in the event it was—examined it and prepared a submission to government in August 1999. The current bill was then prepared and presented.

Given this exhaustive process and the content of the bill, the Labor Party has decided to support much of the government's bill and will not be supporting Mr Rugendyke's bill. As I said, Mr Rugendyke's bill has an uncertain provenance and, in our opinion, makes no attempt at balancing, to the extent that it should, the competing interests of the parties. Having said that, I should indicate that the Labor Party is prepared to support significant amendments that Mr Rugendyke will nevertheless, as I understand it, be making to the government's bill.

It is also obvious that the government's bill does not please all parties, with landlords claiming bias in favour of tenants and tenants claiming bias in favour of landlords and both claiming that unexpected and unexplained procedures have been placed in the bill by the government. In such a vital and sensitive area, unanimity probably cannot be achieved and uneasy compromises will be necessary.

There have been some serious misstatements, perhaps to the point of being scurrilous, in the media about the Labor Party's position, but the Labor Party has listened deliberately and carefully to both landlords and tenants in this matter and has worked extremely hard at achieving a balanced and reasonable position in relation to this bill.

My office and those of other Labor members have received strong representations from tenants' representatives, property owners, the Law Society and individual lawyers and business owners about the bill. We have decided that, despite the effort that has gone into the government's bill, additional balancing of it in favour of the tenant is desirable. We will be moving a series of amendments all designed to assist the tenant in negotiations with landlords without locking either of them in to undesirable positions.

We will propose an amendment to ensure that tenants cannot be locked out of their premises. If the lessor wishes to terminate the lease, it must apply to the court for an order ending the lease and to evict the tenant. Residential lessors cannot just lock tenants out. Commercial and retail tenants must apply for a court order if they wish to terminate the lease. It is reasonable to safeguard the tenant's interests, stock and possession of the premises by requiring a lessor to apply for a termination order. It will be incumbent upon the government to ensure that the court procedures are streamlined so that applications for termination orders, and all other disputes referred to the court, are determined speedily.

We will be proposing to amend various time limits to give the tenant more time to negotiate renewal of their leases and prevent manipulation by the lessors. These amendments should be non-controversial. For example, clause 51 contains a provision that for leases not renewed within three months of their expiring, the lessor can ask for a rental above "market rental". An unscrupulous landlord could drag out negotiations over renewal beyond the three months period to obtain a higher rent. To prevent this, I propose that the time limit in the clause should be increased from three months to 12 months to encourage a more reasonable approach to negotiations.

There is a danger that the lessor may be able to manipulate the provisions relating to the maximum amount of bond and the payment of rent in advance to obtain a higher than permitted bond. I propose an amendment to provide that, if rent is paid for more than three months in advance, the additional rent payment counts as part of the maximum bond.

This clause also governs how the lessor offers to renew the lease, but it does not make it clear that the tenant may accept the offer of renewal subject to the rent being assessed. My amendment will make it clear that if the landlord offers to renew the lease the tenant can accept that offer subject to the market rent being assessed or agreed between them.

Clause 59 deals with the matters that a valuer may take into account in assessing the value. Rent concessions may be given by means other than a direct reduction of the rent by the lessor—for example, subsidised fitout or new carpets. This latter type of concession should also be disclosed to the valuer.

I will be proposing an amendment to ensure that the lessor cannot recover outgoings associated with vacant premises—for example, in respect of a part of a building that is normally rented but is temporarily vacant.

One of the inconsistencies in the bill is its treatment of damaged premises. In some clauses of the bill there are references to leased premises being damaged and therefore unusable. In other clauses there are references to the leased premises or the building containing the leased premises. I propose amendments to clauses 84, 85 and 87 so that a consistent approach is taken.

Clause 98 allows the tenant to appeal to the court if the lessor's mortgagee or head lessor refuses consent to assign, sublease or mortgage the tenant's interest. The mortgagee or head lessor may simply stall by not taking any action to grant or refuse the tenant's request. The clause should be amended to provide that if the mortgagee or head lessor does not act upon the tenant's request within 14 days they will be taken to have consented to the request.

Clause 116 prevents the lessor from releasing the tenant's turnover figures except to nominated persons, but there is nothing to prevent those nominated persons from releasing the information. The clause should be amended to ensure that the nominated persons cannot disclose the information without the tenant's consent.

The lessor is taken to have consulted the tenants in a shopping centre if the lessor consults a representative body of the majority of tenants in the centre. This provision could be manipulated in such a way that a sizeable minority was not consulted. I propose that the provision be deleted.

There are a number of other provisions that I considered amending, but I understand that the government, Mr Rugendyke and the Greens—it may be that there are other amendments I am not aware of—will also be proposing amendments that address some of our other concerns.

Finally, might I say a word about the scrutiny of bills committee report on this bill. It raised questions of undue trespass on personal rights and liberties; insufficiently defined administrative powers; and inappropriate delegation of legislative powers. However, the committee went on to say:

> The fact that the Bill is the result of a thorough and balanced consideration of the existing law, and the needs of those involved in the activities of ... leasing, gives confidence that the provisions are not an undue trespass on the rights to contract.

That is a particularly significant finding of the scrutiny of bills committee, having regard to the nature of reports that each of us here is used to from that committee. That is a finding that members might reflect on in their approach to this bill.

Whilst the number and significance of the amendments to be moved would indicate there is some dispute about whether there has been a balanced consideration, we can be confident that at least the attempt has been made by the government.

One of the major points of difference between the two bills—the government's bill and Mr Rugendyke's bill—is that the government's bill abolishes the Tenancy Tribunal and vests jurisdiction over disputes in the Magistrates Court. Mr Rugendyke retains the tribunal and imposes some responsibility on it for acting quickly.

The government's approach, via the Magistrates Court, provides for case management meetings between the parties, chaired by a magistrate or registrar; referral of disputes to alternative dispute resolution mechanisms if settlement is possible; and full hearings as quickly and cheaply as possible as a last resort. I see little different in whether the form of the dispute resolution is called a tribunal or a court. Presiding officers will be the same people. The registrars and clerks will be the same people. The proceedings will be the same.

I understand that Ms Tucker will be moving to amend the cost provisions currently retained within the government's bill, to the effect that the cost provisions will be the same as currently in the tribunal. I foreshadow that the Labor Party will be supporting those amendments of Ms Tucker's.

The critical element in either approach is a speedy resolution of minor disputes before they poison the relationship between the landlord and the tenant, because, as I said at the outset, these bills go to the heart of our economic wellbeing to the protect the interests of all parties. However, lessors are usually large corporations well able to protect themselves, and I make no apology if the Labor Party tips the balance in favour of the

tenants to a degree that recognises the difference in economic and bargaining power between lessors and tenants.

I look forward to hearing the arguments that will be provided about the detail of the amendments. The amendments that each of us who have been actively involved in the process will be moving are quite detailed and quite significant. As I indicated before, the Labor Party has a significant number of amendments. I will be speaking in more detail to my amendments during the detail stage, which I understand and expect will be next Tuesday.

The Labor Party has indicated that it will not support some of Mr Rugendyke's amendments but is happy to approve others. I look forward to Mr Rugendyke's explanation of the position he will put, and the Labor Party will respond in detail in our comments on Mr Rugendyke's proposals, particularly those in relation to preferential treatment at the end of the lease, and we will set out at that time our understanding and our expectations in relation to the administration of those provisions.

Similarly, I know Ms Tucker has a significant number of amendments that staff in my office have negotiated quite deeply on, as they have with Mr Rugendyke and his office and Mr Stefaniak and his office.

I conclude by saying there has been a significant degree of consultation on this bill amongst offices, to the point that, as I understand it, the government is quite happy to accept most of the Labor Party's amendments, perhaps all. I do not want to be too explicit about that. Through the detailed negotiating process that has gone on, we can achieve a very good outcome on this piece of legislation. I commend members of staff of Ms Tucker, Mr Rugendyke and the minister who have been involved with my office in those very heavy and detailed negotiations.

MS TUCKER (4.29): I will address my comments to the government's bill. That is not to say that I believe the government has got it right. My inclination is to support Mr Rugendyke's bill as I am more sympathetic to his intent, which is essentially to protect the interests of tenants, but I have been advised that the government bill is technically more cohesive, and I am aware that it is most likely to be passed, albeit with quite a number of amendments.

I will address my general comments to the principles at stake and some areas where the Greens have a different view from the government. I would also like to commend the government for engaging in an extensive process in developing this bill. I should be careful. The last time I commended the government, all the lights went out. It is not happening again so it must be all right today. It was a good process, and people have worked well together in the Assembly, although I am pleased we are adjourning after the in-principle stage today, because I do not think people have had an opportunity to look at the more recent amendments.

It is worth picking up the details of the process, as I do not believe the outcome is as fair or open handed as it first appears. In respect of substantive issues of tenants' rights, members of the working party with an interest in property ownership—the landlord lobby—consistently outvoted tenant representatives. It was understood at the time that

the working party was to canvass the issues but that voting on recommendations was not intended to determine the shape of the final legislation.

The concerns of the outvoted tenants were duly noted as they arose. A final report from the working party, however, highlighted recommendations supported by the majority of the group. Tenant concerns on pivotal issues—such as tenure, application of the legislation to pre-code leases, and the charging of excessive rentals—were buried in the body of the report. It appears that this report has provided the framework for the government's legislation.

I have no doubt that property owners are more adept at lobbying and at communicating their needs and concerns than are retail tenants. Perhaps this bill reflects that imbalance of power and influence more than it implies a government agenda to look after landlords. Either way, it is not a satisfactory outcome.

I am aware of a number of amendments to the bill from the government, and I understand that the government's amendments have largely come through a further round of consultation with various parties, particularly the Law Society. I will be supporting those amendments. I will also move a number of amendments myself seeking to control some of the damage that the government bill would deliver if unamended. I trust the government will seriously consider supporting my amendments and amendments to be put by Mr Rugendyke and the Labor Party.

My key interests are to guarantee fair and orderly processes of lease renewal, assessing market rent, and dispute resolution for as many small retail tenants as is possible. The government's bill, in the opinion of the Greens, has excluded too many small retail operations from the provisions of the bill. It ignores the consequences to those operations, including community associations and charities that will be left without protection by the passage of this bill. While the existing code does offer such tenants some protection, if the government's bill is passed unamended, these tenants will find themselves in a chaotic and entirely vulnerable situation.

There is also a lack of clarity in the code in regard to tenants who have had leases assigned to them by the preceding tenant. The courts, however, have found that new leases do commence on assignment. The government bill legislates against those findings. It denies tenants the coverage of a lease when tenancy arises from assignment. It encourages the thought that the government is doing all it can to limit the coverage of this bill.

When it comes to dispute resolution, the government bill does not apply equally to all tenants on all matters. We have instead a complex table which limits the application of this act to various dates, depending on the nature of the claim or dispute. It represents a rearguard action on behalf of landlords, one would imagine, to limit as much as possible the additional protection that tenants can get.

In its complexity, however, the government bill also ensures that tenants will find themselves spending considerable time and money on court battles and endless series of legal fights about the right to have a fight. We know such an approach will hurt the small players much harder than the large. In a very general sense the government, by importing the complexity of the Magistrates Court into this bill, and in deciding not to pursue the

option of a tribunal, has indicated that it is not sympathetic to the needs of tenants. It has guaranteed greater complexity, longer delays and higher costs at almost all levels of the operation of this bill.

If amendments to revert to a tribunal fail, the onus will be on the government to make sure, in its administration of the court, that procedures are put in place to ensure the prompt, expeditious and low-cost resolution of simple disputes, and to use as a model the Tenancy Tribunal in order to limit the timeframe and the costs associated with the court.

The government might argue that it has done its consulting; it has done its hard work. But when we get down to detail on this bill, it is clear that, if unamended, it will disadvantage tenants, large and small, in numerous ways, which leads me to believe that the government has intended to do that.

Another example of this subtle attempt to erode the rights of tenants rather than to confirm them, can be seen in regard to the costs of subleasing plans. Under the existing code it was unclear as to who ought to carry the cost of the registration of a lease. Under this bill, however, the tenant does become liable for that cost but also, and unfairly, can become liable for the costs of drawing up and registering a subleasing plan. A subleasing plan adds value to the property. The benefit accrues to the property owner rather than the tenant, yet under this government legislation the tenant would have to pay.

The government has also chosen not to come to grips with conflict of interest. It could be that some valuers believe that they might lose some work if they have to declare as a possible conflict of interest any involvement they have in property ownership or management, but it is undeniable that such an involvement might constitute a conflict of interest and that parties to a lease being valued ought to be informed of that involvement. The government again fails to appreciate the vulnerability of tenants in this process and the importance of transparency to their faith in process.

Tenants in shopping centres are in a particularly weak bargaining position. Unfortunately, this bill entrenches the right of landlords to destroy the business of existing tenants by introducing direct competitors when and where they like, with no compensation owed to tenants so affected.

One aspect of the bill as it stands that I need not mention is that the government has tried to entrench secrecy into the assessment of market rent. I am pleased to see that the government, in its amendments, has gone some way towards correcting this problem.

Finally, one very important aspect of this bill that must be addressed is that it strips away quite casually the rights of tenants to a five-year term to renew their lease for a further five-year term. It is generally accepted that under the existing code the right to a five-year term gives tenants an option to renew for a further five-year term. This is a rather careless clause in the bill, however, that removes the right to a subsequent five-year term. This provision of this bill must be amended at the detail stage, as it undermines the whole stated intent of the bill.

I look forward to the work of amending this bill so that it measures up to the intent that the government has declared for it, and I look forward to the support of other members of the Assembly in that process.

MR MOORE (Minister for Health, Housing and Community Services) (4.37): In rising to support the government bill in principle, as I would presume most people do, I think it is worth making a few comments. On this legislation I have stood aside from cabinet and not discussed any detail with either Mr Stefaniak, who now has carriage of the bill, or the Chief Minister when he had carriage of this legislation.

I find myself in some difficulty. Mr Rugendyke was aware that I had put up legislation not dissimilar in general principle and thrust to the legislation that he has put up. Therefore, I am very keen about achieving the sorts of outcomes he has set out. The thing that concerns me most is the process that the bill has been through and what we do to process. A huge consultative process established the position of the legislation that the government has put forward. That process was about compromise. It was about bringing the landlords together with the tenants in an attempt to try to achieve an outcome people had worked together on. Under those circumstances you are never going to get full agreement, so people seek to make compromises.

For us to interfere with those compromises is something I have some difficulty with. I am aware that some argue—it was in the CARTA newsletter, for example—that the tenants' views were often recorded when they lost what was effectively a vote. There is in the government's legislation a significant improvement in what we had. On the other hand, the approach of Mr Rugendyke would significantly improve tenants' rights. There is always a tension between the commercial prerogative of a landlord and the commercial prerogative of tenants. We still do not have that balance right.

I will be supporting both pieces of legislation. I support what Mr Rugendyke is trying to achieve. However, I will be looking at each of the amendments in turn to try to determine what is the most effective way to deliver tenants' rights without totally undermining the process that went on. It is a very difficult balancing act, as everybody in this Assembly has found. I know that members have had meetings. I was invited to those meetings but unfortunately had prior and more pressing commitments. For that reason I will be listening carefully to the argument put on each of the amendments to see whether I can get as consistent an approach as possible.

MR RUGENDYKE (4.41): It is important to remind members of the fundamental difference between the government's bill and my bill. When a choice is made between both bills, the issue of jurisdiction is set in concrete. The government bill repeals the Tenancy Tribunal Act 1994. The dispute forum therefore becomes the Magistrates Court, with appeal to the Supreme Court.

Imagine a scenario where a tenant has a dispute with a landlord. The dispute is heard in the Magistrates Court. The landlord allows the process to flow, irrespective of the length of time, with his arms simply folded. The tenant has a win. The landlord then appeals the decision to the Supreme Court, which incidentally he can do on a error of law or an issue of fact. How many small business operators do you think would be able to survive that process without going broke, as many have done?

My bill maintains, streamlines and enhances the role of the Tenancy Tribunal, a forum that gives small business a fair go. The key elements of my bill include:

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- five-year security of tenure rights for small business owners;
- preventing landlords from locking out or evicting tenants inappropriately;
- a 28-day deadline on the Tenancy Tribunal to resolve disputes, preventing cases from being purposely tied up or stalled in the process for excessive periods;
- providing the tenant with first right of refusal on the lease; and
- compelling landlords to commence lease negotiations at least six months prior to the end of the lease rather than allowing landlords to do as they please and leave the tenants in limbo.

The first and fundamental choice members have to make is about jurisdiction. To support the government's bill at the in-principle stage is to deny small business operators a fair go. I urge members to think carefully about their reasons for repealing the Tenancy Tribunal.

Compare how the opposing bills propose to resolve disputes. My bill streamlines and enhances the Tenancy Tribunal. The tribunal, which specialises in this field, is less costly for small business and, apart from making decisions, also serves to provide advice and assistance for small business during the process.

The government bill transplants the dispute process into the Magistrates Court and the Supreme Court. Sure, this suits big business, which has the finances and the resources to manipulate the legal process. But for small business this is costly and adversarial. This is a model that stands to bury legal disputes in a judicial system that is already under pressure. Big business might like to stall disputes in this manner, but all it achieves is squeezing the life out of the small business operator. If the dispute process was put in the Magistrates Court, it would disadvantage small business from the outset.

It is also worth comparing the appeals processes. In the government bill, appeals can be made to the Supreme Court on questions of fact or law. Again, this is geared towards prolonging disputes. My bill proposes that only questions of law may be subject to appeal, which streamlines the process to promote quicker resolution and removes the temptation for wealthy landlords to prolong the dispute in court. It is about time goodwill for tenants was recognised in this town. It is about time landlords were made accountable for the termination of leases. It is about time the playing field was levelled.

The government talks about the consultation period that led to this bill. But let me put it into perspective. The numbers on the working party were stacked so that the core issues for genuine, independent small businesses were not adopted. While there was minor representation of tenants, this was clearly outweighed by those who had landlord and/or property interests.

My push for security of tenure does not make my bill a rogue initiative. An inquiry conducted by the House of Representatives that resulted in a report called *Finding a balance towards fair trading in Australia* specifically recommended that security of tenure be introduced. The federal government's inquiry concluded that fair trading for tenants included a minimum of five-year leases and the first right of renewal. The ACT government has ignored these recommendations because they are interested only in the top end of town. My bill simply implements the recommendations which make it a fair playing field. The federal government inquiry examined the issues at the same time as

the ACT working party, and the federal government inquiry concluded that security of tenure was essential to make the process fair for small business.

After the ACT working party tabled its report in November 1997, the government issued an exposure draft about a year later. It took close to another year for the Law Society to pick the government proposal to pieces with a 240-page analysis . It took another year for the government to finally move on the Law Society's advice and remodel the exposure draft in a form that was fit for presentation.

In the meantime, I had responded to considerable frustration in the small business community about the present system. I proposed obligations for both tenants and landlords, with the aim to have direct access to, and quick resolutions from, the Tenancy Tribunal. This bill was more than a year in the making and was on the table some five months before the government finally got its act together.

The onus is squarely on the opposition to stand up for small business in this debate. The opposition makes a lot of noise about small business, and this is their chance to have the courage of their convictions. It seems that both major parties have a habit of pandering to the top end of town on these types of issues, particularly in an election year and when campaign backing is in the offing. I will be interested to see some of the donations the top end of town throw their way.

One of the main reasons the public is disillusioned with the major parties is that they are so similar. They pander to the big boys and leave the little guy to absorb the hard hits. If the major parties abandon small business in this debate, which does appear the most likely scenario, I will continue the fight, particularly for security of tenure. If my bill fails, I will certainly strive to amend the government's bill to achieve some reason.

I will continue the fight to ensure that there is an appropriate balance between the bargaining power of landlords and tenants. I have stated in this place before, and I will say it again, that the major shopping malls in particular can be ruthless. We all know of people who have been screwed because the landlord holds all the power. Presently there is no deadline for landlords to renew leases. Negotiations can be delayed and the tenant put on hold until the lease runs out. They do not know what their future holds or whether the landlord truly intends to renew the lease.

I mentioned the dispute process earlier, and I would like to return to that point. We should be building on a platform that is firmly established in the form of the Tenancy Tribunal. I cannot stress enough that moving to the Magistrates Court well and truly puts the tenant behind the eight ball. The chief problem with the tribunal as it stands is that it is not uncommon for dispute applications to be tied up for long periods in a regimented process, sometimes for months on end.

My bill gives the tribunal a series of options to respond to cases or to grant an appropriate interim order if satisfied that the person applying, whether landlord or tenant, would suffer detriment if it were not granted. This provides clarity for all parties and confirms the intention to deal with problems while they are molehills and before they become mountains.

I am far from convinced that taking disputes to the Magistrates Court will improve the situation. I am quite certain that it would worsen the situation under the government bill as it stands. Surely enhancing the established and specialised tribunal would be the most desirable and practical approach.

The opposition's deputy leader, Mr Quinlan, has publicly acknowledged the imbalance of power that landlords hold over small business owners. My bill is the perfect opportunity for him to demonstrate his support for small business. Last year Mr Quinlan issued a media release which referred to cases where "small businesses have been taken close to the brink, if not to the wall, purely because of an imbalance in negotiating power". If the opposition follows the government bill in this debate, it will desert small business and also pander to the top end of town. I have presented the opposition with a genuine opportunity to take a stand for the small business community and to fix the glaring inadequacies which Labor recognises exist under present laws. I truly hope that the opposition does level the playing field and proves that it has a serious commitment to small business. It would be a sad reflection on the major parties if they failed to protect small business owners in the ACT.

I would also like to take this opportunity to remind members about the approach taken by the Property Council in this debate. We all know that the Property Council sits in the government's hip pocket, and I would be deeply disappointed if the opposition similarly bowed to their wishes.

The Property Council, which represents the major landlords such as those in shopping malls, circulated a highly questionable legal advice in an attempt to convince MLAs to oppose my bill. Subsequent opinion from Mr Alvin Hopper, the principal assistant legislative counsel at ACT Parliamentary Counsel, described the Property Council's analysis as tendentious and unconvincing. The Property Council has been attempting to sabotage my small business initiatives since August 1999, nine months before the bill was tabled. The Property Council, in a newsletter in 1999, urged their members to "do what they can to ensure that amendments proposed by David Rugendyke are defeated". This was nine months before the bill was tabled, before they had even sighted my proposed legislation.

Obviously, doing whatever they can included distributing extremely dubious legal advice. The opinion I have received from Mr Hopper, who is highly regarded and a published authority in this field, unreservedly dismisses the Property Council's claims on unjust acquisition and says the assertions should be treated with considerable reserve. Mr Hopper has described the bulk of the Property Council's advice as biased, and Assembly members should be made aware that these are the lengths the Property Council have gone to so that they can preserve the present imbalance of power.

I urge my Assembly colleagues to vote down the government bill at the in-principle stage and direct their support to endorsing my bill.

MR STEFANIAK (Minister for Education and Attorney-General) (4.55): The government will not be supporting Mr Rugendyke's bill. I will mention a few matters that Mr Stanhope and other speakers have raised. Mr Stanhope's first two minutes were amazing. My party might like to swap you there. Jon, I think you make a lot more money

out of your club than we do out of any interests we have. I will not make any more comments in relation to that.

Mr Rugendyke made a few comments I need to respond to, to put the record right. He expressed a concern that appeals on question of law or fact could go to the Supreme Court. This is outside the power of the Assembly, because the Supreme Court has all necessary appellate jurisdiction under the Australian Capital Territory (Self-Government) Act. It is just a fact of life and a fact of law that that is the superior court in the ACT. It is our appellate jurisdiction, and naturally appeals on questions of law or fact will end up there, and indeed can go higher in the hierarchy of courts should parties want to do that.

Mr Rugendyke: Have a look at my bill.

MR STEFANIAK: Maybe you should have a look at the self-government act too. Mr Rugendyke also mentioned that the membership of the working party was stacked. I have had a quick look through it, and I can count five members from the Property Council or Property Owners Association and some six members representing either small business or tenants, including an ex-tenant. I do quite know where you get that idea from, Mr Rugendyke.

People talk about a level playing field. That is terribly important, and something members should ponder very closely before we vote on the in-principle stage. I will come back to that later.

The government bill has a very long history. The Tenancy Tribunal Act 1994 and the commercial and retail leases code of practice regulate ACT commercial and retail leases. It was a controversial scheme when it was introduced. The initial controversy has been exacerbated by significant delays in proceedings before the tribunal. There were a lot of claims, many of them justified, that it did not create a level playing field. So a review was conducted. From 1997 to 1998 a working party consisting of the various stakeholders reviewed the legislation. In late 1998 the government tabled an exposure Leases (Commercial and Retail) Bill. That gave effect to some of the recommendations of the working party.

Following the tabling of that bill, extensive negotiation on its final form was undertaken with key stakeholders, particularly an expert committee of the Law Society consisting of representatives of landlords' and tenants' solicitors. That took from 1998 to 2000. That negotiation was extensive.

On 18 October 2000 the government tabled the Leases (Commercial and Retail) Bill 2000. People in this Assembly occasionally accuse others of not engaging in consultation. The opposition says it of government; we say it of them and other people. Ms Tucker is very keen on that. Everyone has accused others of not consulting enough. The government legislation on the table would have to be one of the most widely consulted on—perhaps consulted to death on—pieces of legislation to get to this stage.

Mr Moore: Since self-government.

MR STEFANIAK: My colleague Mr Moore says, "Since self-government." I think that would have to be so, Mr Moore. It would have to be a record.

The final form of the bill is the culmination of a lengthy consultative process—hundreds and hundreds of hours of work by stakeholders who have worked to ensure that it does represent a balance of the competing interests of those concerned. In this area—which has always been a bit of a minefield, not only in Canberra but throughout Australia, not only in retail but also with normal landlords and tenants—it has been very difficult getting a balance. It has been very difficult to get to a stage where you can have a level playing field.

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

MR STEFANIAK: I to give credit to those who did so much work. Particular credit should be given to the work of the chair of the Law Society expert committee, Mr Brian Tetlow, who is in the gallery. I acknowledge him. I would also acknowledge the members of his committee, who contributed to the success of the work of that committee.

The government endeavoured to ensure that its bill represented the best and fairest outcome for all parties to a dispute. It remains generally consistent with the underlying policies adopted by the 1994 code and act. For example, as in the existing law, the bill prohibits conduct that is unconscionable or harsh and oppressive. However, on the basis of experience, the bill also provides that the conduct may occur by a tenant or a landlord, and it gives example of such conduct.

Many of these provisions are not the subject of amendments. In the heat of the debate the agreements reached about these provisions should not be overlooked. A number of the matters to be discussed are of minor import only. However, there are two matters of exceptional importance not only to the interests of tenants and landlords but also to the economic wellbeing of the territory. That is something I do not think people should lose sight of in this debate.

The first important question is that of court, not tribunal. In one significant respect, the bill presented by government is significantly different from the approach taken in 1994. To remedy serious problems in the existing dispute resolution process which resulted in delay and uncertainty, the bill removes jurisdiction from the Tenancy Tribunal to the Magistrates Court and imposes new court-directed processes. Mr Stanhope put it fairly well when he spoke about going through the same door and seeing the same faces. I think that was a valid point to make.

Mr Rugendyke has foreshadowed wholesale changes to turn back the clock. Accordingly, I think it is necessary to nail the lie about the value of a tribunal in this area. We have had a tribunal for five years. We are now in a position to judge whether that tribunal should be retained. The government believes that the existing system should go, because tribunal proceedings take too long, and delay translates into cost—cost to all parties.

For example, the time to first directions averaged 167 days. The longest time was 870 days. I had been around the courts for quite a while before I came into this place, and I think the longest matter I had involved about 21 part-heards in getting to the Supreme Court and about another 18 months there. I am just amazed at 870 days for disputes that go before the tribunal.

Half the disputes going to directions hearings averaged four directions hearings. Time to hearing averaged 292 days. Time to last hearing day averaged 333 days. The longest time was 921 days, almost three years. Since 1998 there appears to have been a steady decrease in the time required to bring a matter on for hearing. Despite these improvements, these times are unacceptable within a commercial environment—unacceptable to all parties.

The new act will require the court to actively manage disputes within a flexible framework. This will accommodate both simple and complex disputes through a case management hearing process. At such a hearing the court will be required to assess the likelihood of the parties resolving issues in question before the hearing and assisting or encouraging parties to do so by the most appropriate method—for example, by promoting early dispute resolution, including but not limited to mediation, conciliation, facilitation, early neutral evaluation and arbitration—and where settlement seems unlikely, giving directions concerning the matter in which the proceedings will be pursued, which, in the opinion of the court will enable costs to be reduced and will help achieve a prompt hearing of the matters in issues between the parties to the proceedings.

That will be a very significant advance on the present arrangements. The approach has the flexibility to enable a sensitive response to the dispute resolution requirements of each dispute. Additionally, it will require the court to encourage the resolution of disputes by non-litigious means. I urge members not to lend support to amendments that might serve to cut back the government approach.

The second important question is tenant preference. The government bill provides very significant and valuable benefits to tenants through revised market rent provisions. Amendments proposed to clause 53 lock in the concept of an interim agreement, subject to a determination of market rent. Notwithstanding these changes, some have argued for a far more radical change to property interests in the ACT.

Under amendments proposed by Mr Rugendyke, existing owners of property would face an entirely new set of constraints on the way they deal with their property, and this has sparked, understandably, an unprecedented level of concern. It is understood that this may lead to Mr Rugendyke proposing a scheme similar to that introduced in South Australia.

The amendments we have seen so far do not mirror the South Australian scheme, and they are completely unacceptable in their circulated form. Even if Mr Rugendyke does table the amendments in the South Australian form, I would urge members to tread carefully. In South Australia those amendments have not been tested. The lease laws changed in South Australia in 1997, and the changes applied only to new leases, so the law will not be tested in application until next year, 2002, when the five-year tenancies come up for renegotiation. Putting something in the law in the belief that if it is really bad you might be able to take it out later rarely works. It is very difficult to take

something away from someone. It is important to get it right first. I urge members to be very cautious.

This is a very complex bill. There are many amendment sheets. This is the most complex piece of legislation this Assembly has dealt with since self-government. We are still getting more amendments today. Hopefully that will be it for amendments and there will be no more amendments.

Mr Stanhope: There are no problems—

MR STEFANIAK: I do not know whether you are indicating that you have more amendments, but if there are more amendments get them in now—

Mr Stanhope: They are yours.

MR STEFANIAK: Even if they are ours, and let us all have a chance over the next few days to look at them. Let that be the end of the amendments, because this is already an amazingly complex piece of legislation. Most of the amendments we might debate are contingent on the success or failure of Mr Rugendyke's amendments going to either of the two matters I discussed earlier. Accordingly, to simplify the debate, I propose to move that the mood of the Assembly be tested in relation to those matters at the beginning of the detail stage. Whether my move succeeds or otherwise will determine what happens to the earlier parts of the bill. I think most members are agreeable to my suggestion as a sensible way to proceed.

I was happy to hear Mr Stanhope acknowledge a number of people for the work they had done. Might I join with him in acknowledging the work done by the various staff members—my chief of staff Mike Strokowsky, Geoff Gosling, Bevan Hannan and others—who participated actively in very detailed discussions on very complex amendments. They have put in hours of work, even over the last week, to try to assist the process. I extend my thanks to all of members of staff from all parties and the Independents who were involved.

The bill introduced by the government last year contained a July 2001 start-up date. Delays in debating this matter and now the prospect of extensive modifications to the bill mean that this date cannot be met. Depending on the extent of changes moved in the Assembly, I give notice now that at the end of the debate the government will move a change to either a January 2002 or a July 2002 commencement, whichever is the more applicable.

It is terribly important to get a level playing field. If this is done right, we might come very close to doing that in this most complex and difficult area, an area that has never been easy. I think the landlord side and the tenant side have come together, and we have put a good bill on the table. Anything that goes too far to one side is going to have adverse effects. I would caution Mr Rugendyke. If some of the things he is seeking to introduce are introduced, they may have completely the opposite effect to that he desires, and that is going to hurt the Canberra consumer and ultimately even hurt the little bloke, the tenant, whom he says he is seeking to protect.

This government wants to see small business flourish, wants to see medium business flourish and wants to see big business flourish. It does want a level playing field. As a result of a hell of a lot of effort that has gone into that, what we have managed to put on the table does that best. Some of the later amendments run the risk of ultimately defeating the purpose and intent with which members who will be moving them hope they will achieve. Think very carefully over the next few days, ladies and gentlemen, because this is one of the most important pieces of legislation this territory has debated since self-government.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 13		Noes 3
Mr Berry	Mr Kaine	Mr Moore
Mrs Burke	Mr Quinlan	Mr Rugendyke
Mr Corbell	Mr Smyth	Ms Tucker
Mr Cornwell	Mr Stanhope	
Mr Hargreaves	Mr Stefaniak	
Mr Hird	Mr Wood	
Mr Humphries		

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1.

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

Leases (Commercial and Retail) Bill 2000

Debate resumed from 24 May 2000, on motion by **Mr Rugendyke**.

> That this bill be agreed to in principle.

Question resolved in the negative.

Adjournment

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

That the Assembly do now adjourn.

Brush-tailed rock wallabies
CTEC documents

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (5.17): Mr Speaker, for the information of members, tonight *Quantum*, Australia's premier science program, will have a feature dedicated to some activity that is going on at Tidbinbilla. The entire program, which commences at 8.30 this evening, will be devoted to the fight to save the endangered brush-tailed rock wallaby at Tidbinbilla.

In a world first, last month two of the endangered male brush-tailed rock wallabies from Tidbinbilla Nature Reserve were released back into the wild in an effort to conserve the species from extinction. Canberrans should be particularly proud that Tidbinbilla Nature Reserve has played a vital role in saving the endangered brush-tailed rock wallaby from extinction.

Tidbinbilla is the first place in the world to incorporate quite an innovative cross-fostering technique to increase breeding success rates. That technique has generated an enormous amount of international interest. It involves catching a foster mother Tamar wallaby and transferring the pouch young from a brush-tailed rock wallaby into the Tamar's pouch. The benefit of this is that, with the removal of its young, the brush-tailed rock wallaby is then able to produce up to six young each year instead of the single young it would normally produce. Our captive breeding program has had spectacular success. Sixteen young brush-tailed rock wallaby joeys have been born at Tidbinbilla over the past few years.

In the effort to conserve the species, not just in reserves but also in the wild, an enormous amount of work has been done in mapping the species. There are some in southern New South Wales and there is a small population in eastern Victoria. The two male brush-tailed rock wallabies released back into the wild have joined a small colony of three females on a private property in southern New South Wales, the location of which is being kept a secret, because we want them to thrive and prosper.

Environment ACT has been working with a number of other agencies across Australia for some years to build up the stocks of the brush-tailed rock wallaby so that we can release them back into the wild. There is no point in having a program to protect an endangered species if you do not have the view that they should eventually return to the wild. What we are achieving is an indication of just how successful the staff at Tidbinbilla have been. This is the first step in a very long road to recovery. It is tremendous that it is being taken here in our own Tidbinbilla Nature Reserve.

The brush-tailed rock wallaby is considered to be critically endangered in Victoria. It was last sighted in the wild in the ACT in 1959. The last wild Victorian population of about 20 to 30 creatures is now restricted to the Snowy River National Park in the east of

the state. In southern New South Wales there are small colonies in the Kangaroo Valley and the Blue Mountains.

I hope that the *Quantum* special tonight on the ABC will stimulate more community and corporate support for the captive breeding program. With that support, we can make it bigger and better. Tidbinbilla has the largest captive breeding population of rock wallabies. They can be viewed every day, but you have to be quick. They move around very fast.

Many individuals should be congratulated on the Tidbinbilla breeding program. Geoff Underwood, our wildlife officer at Tidbinbilla, and his staff deserve special congratulations because they have made a tremendous effort and they are achieving tremendous success.

On a second matter: the Assembly asked yesterday that documents from CTEC be lodged with the Clerk for members to view. That has been done. The documents were lodged with the Clerk by 5 o'clock, in accordance with Ms Tucker's motion. CTEC has prepared them in a way that documents to be released normally are. They have taken the confidential data out of them, which is not in a the spirit of what this place agreed. The first set of documents is available for members to view. I have asked that CTEC prepare a second set in accordance with what was agreed.

The form of the documents is my fault. I apologise. I spoke to Mr Stainlay when Ms Tucker moved her motion and said, "What will we do?" He told me how he would prepare a set normally for an FOI request. He prepared one set. We will get a second set quickly with all the details members said that they would view and keep confidential.

Legislative Assembly Secretariat

MS TUCKER (5.22): I do not often speak in an adjournment debate, but there is a matter that I would like people in this place to consider. It is the impact on the Secretariat of how we work. This morning, with very little notice, I asked for assistance to amend an amendment from Mr Moore which I had not seen before. I am using this as an example, but I think we have all been guilty of this, so I am not particularly targeting Michael Moore. The example that occurred today has made me want to talk and ask other people to think about the matter.

I know that for political reasons sometimes we do land things in the chamber. That is fine to a point, but when we want to make complex amendments to something that has been tabled it puts unfair pressure on the Secretariat. Today two debates have been adjourned because not all members have had a chance to get across the amendments. I know that amendments are going into the Clerk's office throughout the day. We all need to be aware that there are not many people working there, and I do not think it is fair. We are all under a lot of pressure, and we do the best we can, but sometimes we take the Secretariat for granted. I regret that. I regret it if I put them under extra stress, because I know how much they have to do. I want to acknowledge their work for the record. I also ask that we all consider how what we do impacts on them.

MR SPEAKER: On behalf of the Secretariat, Ms Tucker, I would like to thank you for your kind words, but I would also like to mention that that matter is under consideration.

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

> That so much of standing order 34 be suspended as would prevent the adjournment debate extending for a maximum period of 30 minutes.

Afghanistan—Buddhist statues

MR STEFANIAK (Minister for Education and Attorney-General) (5.24): Mr Smyth was talking about preserving wildlife. One thing we have done in this country in recent years is preserve our heritage. It is a rich heritage, not only since European settlement but dating back 40,000 years or so with indigenous people.

I was saddened to see what some other countries do about heritage when I saw a report in the *Australian* of the Taliban, the fairly lunatic regime that is ruling Afghanistan at present, for very narrow-minded religious reasons destroying some 2,000-year-old Buddhist statues which are absolutely national treasures, indeed world treasures. It made me think how lucky we are to live in a place like Australia where we value our heritage, where we have tolerance and where we are not dictated to by such crazy notions as that bunch of lunatics seem to have.

Civilisations that destroy their own heritage will rue the day that that happened. I am reminded of the destruction done by the Red Guard in China during the cultural revolution and by the Chinese in Tibet, where all but seven or eight monasteries out of 6,000 were destroyed during communist occupation. I want to indicate how lucky I think we are to live in a place like Australia where we value both our natural heritage and our historical heritage.

Question resolved in the affirmative.

Assembly adjourned at 5.26 pm until Tuesday, 6 March, at 10.30 am.

Schedule 1

LEGISLATION (ACCESS AND OPERATION) BILL 2000

Amendments circulated by Attorney-General

1
Clause 1
Page 1, line 6—

Omit "(*Access and Operation*)".

2
Clause 19
Subclause (8)
Page 10, line 30—

Omit "is not required to", substitute "need not".

3
Clause 19
Subclause (8), note
Page 10, line 33—

Omit the note, substitute the following note:

Note See s 110 (Application of s 28) and s 111 (Application of s 50 and s 50A) about Acts and registrable instruments made before the commencement of this Act.

4
Proposed new chapter 4A
Page 16, line 21—

After chapter 4, insert the following new chapter:

Chapter 4A Regulatory impact statements for subordinate laws and disallowable instruments

Part 4A.1 Preliminary

30A Definitions for ch 4A (SLA s 9A)

In this chapter:

authorising law, in relation to a proposed subordinate law or disallowable instrument (the ***proposed law***), means the Act or statutory instrument (and, if appropriate, the provision of the Act or statutory instrument) under which the proposed law will be made.

benefits includes—

(a) advantages; and

(b) direct and indirect economic, environmental and social benefits.

costs includes—

(a) burdens and disadvantages; and

(b) direct and indirect economic, environmental and social costs.

scrutiny committee principles means the terms of reference of the Legislative Assembly's Standing Committee on Justice and Community Safety that apply to subordinate laws and disallowable instruments.

30B Other publication or consultation requirements not affected (SLA s 9B)

(1) Part 4A.2 (Requirements for regulatory impact statements) does not affect any requirements in any other Territory law for publication or consultation about a proposal to make a subordinate law or disallowable instrument.

(2) Part 4A.2 does not apply to the subordinate law or disallowable instrument if the requirements are of a comparable level to publication and consultation under the part.

30C Guidelines about costs of proposed subordinate laws and disallowable instruments (SLA s 9C)

(1) The Minister may, in writing, issue guidelines to be applied in deciding whether a proposed subordinate law or disallowable instrument is, or is not, likely to impose appreciable costs on the community or a part of the community.

(2) Guidelines issued under this section are a disallowable instrument.

(3) The Minister must issue guidelines under subsection (1) within 6 months after the commencement of this section.

(4) Subsection (3) and this subsection expire 6 months after the commencement of this section.

Part 4A.2 Requirements for regulatory impact statements

30D Preparation of regulatory impact statements (SLA s 9D)

(1) If a proposed subordinate law or disallowable instrument (the ***proposed law***) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the ***administering Minister***) must arrange for a regulatory impact statement to be prepared for the proposed law.

(2) However, this section does not apply to the proposed law if the administering Minister, in writing, exempts the proposed law from subsection (1).

Note Sections 30B and 30F also state other circumstances when a regulatory impact statement is not required.

(3) An exemption under subsection (2) (the ***RIS exemption***) is a disallowable instrument.

(4) If the RIS exemption is disallowed under this Act after the proposed law has been made in whole or in part, the administering Minister must arrange for a regulatory impact statement to be prepared for the subordinate law or disallowable instrument.

(5) The regulatory impact statement prepared under subsection (4) must be presented to the Legislative Assembly within 5 sitting days after the disallowance of the RIS exemption.

(6) This chapter (other than section 30G (When must a regulatory impact statement be presented?)) applies to the law as if the law were a proposed subordinate law or disallowable instrument.

30E Content of regulatory impact statements (SLA s 9E)

A regulatory impact statement for a proposed subordinate law or disallowable instrument (the ***proposed law***) must include the following information about the proposed law in clear and precise language:

(a) the authorising law;

(b) a brief statement of the policy objectives of the proposed law and the reasons for them;

(c) a brief statement of the way the policy objectives will be achieved by the proposed law and why this way of achieving them is reasonable and appropriate;

(d) a brief explanation of how the proposed law is consistent with the policy objectives of the authorising law;

(e) if the proposed law is inconsistent with the policy objectives of another Territory law—

(i) a brief explanation of the relationship with the other law; and

(ii) a brief explanation for the inconsistency;

(f) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making a subordinate law or disallowable instrument) and why the alternative was rejected;

(g) a brief assessment of the benefits and costs of implementing the proposed law that—

(i) if practicable and appropriate, quantifies the benefits and costs; and

(ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives stated under paragraph (f);

(h) a brief assessment of the consistency of the proposed law with the scrutiny committee principles and, if it is inconsistent with the principles, the reasons for the inconsistency.

30F When is preparation of a regulatory impact statement unnecessary? (SLA s 9F)

(1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the ***proposed law***) if the proposed law only provides for, or to the extent it only provides for, any of the following:

(a) a matter that is not of a legislative nature, including, for example, a matter of a machinery, administrative, drafting or formal nature;

(b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a Territory authority or instrumentality) by—

(i) adversely affecting the person's rights; or

(ii) imposing liabilities on the person;

(c) an amendment of a Territory law to take account of current legislative drafting practice;

(d) the commencement of an Act or statutory instrument or a provision of an Act or statutory instrument;

(e) an amendment of a Territory law that does not fundamentally affect the law's application or operation;

(f) a matter of a transitional character;

(g) a matter arising under a Territory law that is substantially uniform or complementary with legislation of the Commonwealth or a State;

(h) a matter involving the adoption of an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, the ACT;

(i) a proposal to make, amend or repeal rules of court;

(j) a matter advance notice of which would enable someone to gain unfair advantage;

(k) an amendment of a fee, charge or tax consistent with announced government policy.

(2) A regulatory impact statement also need not be prepared for the proposed law if, or to the extent, it would be against the public interest because of the nature of the proposed law or the circumstances in which it is made.

Example

A law may need to be made urgently for controlling the spread of a disease or dealing with another urgent situation.

Note Sections 30B and 30D also state other circumstances when a regulatory impact statement is not required.

30G When must a regulatory impact statement be presented? (SLA s 9G)

(1) This section applies if a regulatory impact statement for a proposed subordinate law or disallowable instrument (the ***proposed law***) has been prepared and the proposed law is made in whole or part.

(2) The statement must be presented to the Legislative Assembly with the subordinate law or disallowable instrument.

Part 4A.3 Failure to comply with requirements for regulatory impact statements

30H Effect of failure to comply with pt 4A.2 (SLA s 9H)

(1) Failure to comply with part 4A.2 (Requirements for regulatory impact statements) in relation to a subordinate law or disallowable instrument (the ***law***) does not—

(a) affect the law's validity; or

(b) create rights or impose legally enforceable obligations on the Territory, a Minister or anyone else.

(2) In addition, a decision made, or appearing to be made, under part 4A.2 is final and conclusive.

(3) In this section:

decision includes—

(a) conduct engaged in to make a decision; and

(b) conduct related to making a decision; and

(c) failure to make a decision.

5
Heading to part 5.2
Page 18, line 1—

After "**INSTRUMENTS**", insert "**GENERALLY**".

6
Clause 36
Heading
Page 19, line 22—

Omit the heading, substitute the following heading:

36 Power to make statutory instruments for an Act etc (SLA s 2A)

7
Clause 36
Subclause (1)
Page 19, line 24—

Omit "under", substitute "for (or for the purposes of)".

8
Clause 38
Subclause (1)
Page 20, line 13—

After "instrument", insert "(the ***authorising law***)".

9

10

11
Clause 38
Subclause (2)
Page 20, line 17—

Insert the following examples:

Examples

1 If the instrument is a disallowable instrument, an amendment or repeal of the instrument is also a disallowable instrument.

2 If the instrument is a notifiable instrument, an amendment or repeal of the instrument is also a notifiable instrument.

3 If notice of the making of the instrument must be published in a newspaper, notice of an amendment or repeal of the instrument must also be published in the newspaper.

12
Clause 38
Proposed new subclause (3)
Page 20, line 17—

After subclause (2), insert the following new subclause:

(3) This section is subject to any provision of the authorising law.

13
Clause 39
Page 20, line 18—

Omit the clause, substitute the following clause:

39 Statutory instrument may make provision by applying a law or instrument (SLA s 8)

(1) If an Act, subordinate law or disallowable instrument (the ***authorising law***) authorises or requires the making of a statutory instrument about a matter, a statutory instrument (the ***relevant instrument***) made under the authorising law may make provision about the matter by applying (with or without change)—

(a) a law or instrument, or a provision of a law or instrument, as in force at a particular time; or

(b) a law or instrument, or a provision of a law or instrument, as in force from time to time if—

(i) the statutory instrument expressly provides that the law, instrument or provision is applied from time to time; and

(ii) for an instrument or provision of an instrument—the authorising law authorises the instrument or provision to be applied from time to time.

Example of paragraph (b) (i)

The *ABC Regulations 2000* provide that noise measurements are to be taken in accordance with the NSW noise control manual as in force from time to time.

Example of paragraph (b) (ii)

The *XYZ Regulations 2000* are made under the *XYZ Act 1999*. The *XYZ Act 1999* contains the following provision:

'(2) The regulations may apply, adopt or incorporate (with or without change) an instrument or provision of an instrument as in force from time to time.'.

(2) If the relevant instrument makes provision about the matter by applying (with or without change), a law or instrument, or a provision of a law or instrument, as in force at a particular time, the text of the law, instrument or provision as in force at that time is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.

(3) If the relevant instrument makes provision about the matter by applying (with or without change), a law or instrument, or a provision of a law or instrument, as in force from time to time, the text of each of the following is taken to be a notifiable instrument made under the relevant instrument by the person authorised or required to make the relevant instrument:

(a) the law, instrument or provision as in force at the time the relevant instrument is made;

(b) each subsequent amendment of the law, instrument or provision;

(c) for a law or instrument that is repealed and remade (with or without changes)—the law or instrument as remade and each subsequent amendment of the law or instrument;

(d) for a provision that is omitted and remade (with or without changes) in another law or instrument—the provision as remade and each subsequent amendment of the provision.

(4) Subsections (2) and (3) do not apply in relation to—

(a) an ACT law or a provision of an ACT law; or

(b) a law of another jurisdiction, an instrument, or a provision of a law of another jurisdiction or an instrument, if the authorising law or the relevant instrument expressly declares that it does not apply.

(5) Subsections (2) and (3) apply in relation to a law of another jurisdiction, an instrument, or a provision of a law of another jurisdiction or an instrument, with the modifications (if any) expressly made by the authorising law or the relevant instrument.

(6) In this section:

ACT law means an Act, subordinate law or disallowable instrument.

applying includes adopting or incorporating.

disallowable instrument, for a Commonwealth Act, means a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

instrument does not include a law.

law means an ACT law or law of another jurisdiction.

law of another jurisdiction means—

(a) a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act; or

(b) a State Act, or any regulations or rules under a State Act; or

(c) a New Zealand or Norfolk Island Act, or any regulations or rules under a New Zealand or Norfolk Island Act.

14
Clause 44
Subclause (2)
Page 22, line 30—

Omit the subclause, substitute the following subclauses:

(2) A statutory instrument made under the authorising law may make provision about the matter by authorising or requiring a stated entity to make provision about the matter, or any aspect of the matter, whether or not from time to time.

(3) In this section:

provision, for a matter, includes determining or regulating the matter, applying the instrument to the matter, being satisfied or forming an opinion about anything relating to the matter, or doing anything else in relation to the matter.

15
Clause 46
Page 23, line 11—

[*Oppose the clause*.]

16
Proposed new part 5.2A
Page 23, line 32—

After part 5.2, insert the following new part:

Part 5.2A Making of certain statutory instruments about fees

47A Definitions for pt 5.2A

In this part:

fee includes a charge or other amount.

provide a service includes exercise a function.

service includes a function or facility.

47B Determination of fees by disallowable instrument

(1) This section applies if an Act authorises or requires a fee to be determined for an Act or statutory instrument by a disallowable instrument.

(2) The fee may be determined—

(a) by specifying the fee; or

(b) by setting a rate, or providing a formula or other method, by which the fee is to be worked out; or

(c) a combination of a specified fee and a ra

te, formula or other method.

Examples of different methods of determining fees

An instrument may determine a fee by specifying an amount (eg $250), or a rate (eg $7.50 per kilogram). An instrument may also determine a fee by providing a formula. For example, the fee for a licence issued for part of a year could be worked out using the following formula:

$$\text{annual fee} \times \frac{\text{whole and part months for which licence issued}}{12}$$

(3) The determination—

(a) must provide by whom the fee is payable; and

(b) must provide to whom the fee is to be paid; and

(c) may make provision about the circumstances in which the fee is payable; and

(d) may make provision about exempting a person from payment of the fee; and

(e) may make provision about when the fee is payable and how it is to be paid (for example, as a lump sum or by instalments); and

(f) may mention the service for which the fee is payable; and

(g) may make provision about waiving, postponing or refunding the fee (in whole or part); and

(h) may make provision about anything else relating to the fee.

Example of paragraph (a)

A provision that the owner for the time being of a vehicle is liable for any unpaid registration fee.

Examples of paragraph (c)

1 A provision that a document prepared and submitted in accordance with a condition imposed under the Act be accompanied by a fee.

2 A provision that royalty ceases to be payable if the percentage of recoverable minerals is less than the prescribed limit.

Examples of paragraph (e)

A provision that a levy is payable within 30 days after a sale of goods.

A provision that, if a licensee fails to pay an instalment payable in the financial year within 14 days after the day it is payable, all remaining instalments payable in the financial year become payable.

Example of paragraph (g)

A provision that a stated official may waive all or part of a charge in stated circumstances, including if the official is satisfied about a stated circumstance.

47 Fees payable in accordance with determinations etc

(1) A fee determined by a disallowable instrument is payable by the person by whom the fee is payable under the determination, in relation to the service (if any) mentioned in the determination and in accordance with the determination, to the person to whom the fee is payable under the determination.

(2) If a service is mentioned in the determination, the fee is payable before the service is provided unless the determination provides otherwise.

(3) If the fee is payable in relation to a service mentioned in the determination and the fee has not been paid in accordance with the determination, no-one is obliged to provide the service.

Examples

1 If a fee for a service is payable in advance under a disallowable instrument and the fee is not paid, there is no obligation to provide the service.

2 If fees for services over a period of time are payable by instalment under a disallowable instrument and the person paying the fees falls behind in payments on the instalments, there is no obligation to provide further services for the person.

(4) Subsection (3) applies to a service even though, apart from that subsection, someone is under a duty to provide the service.

Example

A provision of an Act provides that a registrar 'must' renew a licence if the holder of the licence applies to the registrar for its renewal before the end of the licence term. If a fee is determined for renewal of the licence, the registrar is not required to renew the licence unless the fee is paid.

47D Regulations may make provision about fees

(1) This section applies if an Act (the ***authorising law***)—

(a) authorises or requires fees to be determined for the authorising law, or another Act or a statutory instrument (the ***fees law***); and

(b) the authorising law authorises the making of regulations by the Executive.

(2) Regulations under the authorising law may make provision in relation to—

(a) the payment, collection and recovery of determined fees; and

(b) the waiver, postponement or refund of the fees (in whole or part); and

(c) anything else about which provision may, under section 47B (Determination of fees by disallowable instrument), be made by determination in relation to determined fees.

(3) The power mentioned in subsection (2) (b) includes power to make provision in relation to an entitlement to a waiver, postponement or refund of determined fees in circumstances prescribed under the regulations (including the removal of a statutory capacity).

(4) The regulations may make provision in relation to the payment of determined fees by cheque or credit card, including, for example, the consequences of a cheque not being honoured on presentation or a credit card transaction not being honoured.

(5) The regulations may make provision in relation to the removal of a statutory capacity if any determined fee—

(a) is not paid when it is required to be paid; or

(b) is paid by cheque and the cheque is not honoured on presentation; or

(c) is paid by credit card and the credit card transaction is not honoured.

(6) The regulations may make provision in relation to the restoration of a statutory capacity (whether prospectively or during any past period).

(7) This section is in addition to any provision of the authorising law or fees law.

(8) In this section:

credit card includes debit card.

removal, of a statutory capacity, includes suspension, cancellation, revocation, withdrawal, surrender or other prescribed restriction or termination of a statutory capacity under the fees law or authorising law.

statutory capacity includes an accreditation, approval, assessment, authority, certificate, condition, decision, determination, exemption, licence, permission, permit, registration or other prescribed thing conferring a status, privilege or benefit under the fees law or authorising law (whether or not required under either law for doing anything).

17
Proposed new clause 50A
Page 27, line 26—

After clause 50, insert the following new clause:

50A Effect of failure to notify registrable instrument

A registrable instrument is not enforceable by or against the Territory or anyone else unless it is notified.

18
Clause 61
Subclauses (1) and (2)
Page 33, line 9—

Omit the subclauses, substitute the following subclauses:

(1) An Act commences—

(a) on its notification day; or

(b) if the Act provides for a different date or time of commencement—on that date or at that time.

(2) A subordinate law, disallowable instrument or notifiable instrument commences—

(a) on its notification day; or

(b) if an Act or the instrument provides for a later date or time of commencement—on that date or at that time; or

(c) if an Act provides for an earlier date or time of commencement—on that date or at that time; or

(d) if the instrument, under authority given by an Act, provides for an earlier date or time—on that date or at that time.

Examples for paragraph (b)

1 A subordinate law may provide that it commences on a stated future date or at a stated time on a stated future date.

2 A disallowable instrument may provide that it commences on the day, or immediately after, a stated law, or a stated provision of a stated law, commences.

3 A notifiable instrument may provide that it commences on the expiry of a stated statutory instrument.

4 A notifiable instrument may provide that it commences on the date fixed by a Commonwealth Minister, by notice in the Commonwealth Gazette, under a stated Commonwealth Act.

19
Clause 61
Subclause (4)
Page 34, line 1—

Omit the subclause, substitute the following subclause:

(4) A statutory instrument that is not a registrable instrument commences—

(a) on the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day it is approved; or

(b) if an Act or the instrument provides for a later date or time of commencement—on that date or at that time; or

(c) if an Act provides for an earlier date or time of commencement—on that date or at that time; or

(d) if the instrument, under authority given by an Act, provides for an earlier date or time—on that date or at that time.

20
Clause 79
Proposed new subclause (10)
Page 47, line 31—

After subclause (9), insert the following new subclause:

(10) In this section:

insert includes relocate.

21

22

23
Clause 82
Subparagraph (1) (c) (i)
Page 49, line 19—

After "made", insert "(whether by the same or a different entity)".

24
Clause 90
Proposed new subclause (2A)
Page 54, line 28—

After subclause (2), insert the following new subclause:

(2A) This section applies except so far as the contrary intention appears.

25
Clause 92
Proposed new subclause (1A)
Page 55, line 21—

After subclause (1), insert the following new subclause:

(1A) In subsection (1), a reference to the statutory instruments made or in force under the Act, instrument or provision includes a reference to any law or instrument (within the meaning of section 39), or provision of a law or instrument (within the meaning of that section), applied, adopted or incorporated (with or without change) under the Act, instrument or provision.

Note Section 39 authorises an Act, subordinate law or disallowable instrument to make provision about a matter by applying, adopting or incorporating a law or instrument (as defined in that section) or a provision of a law or instrument.

26
Clause 93
Proposed new subclause (2)
Page 56, line 7—

Insert the following new subclause:

(2) This section applies except so far as the contrary intention appears.

27
Clause 104
Paragraph (1) (o)
Page 60, line 20—

Omit the paragraph.

28
Clause 107
Proposed new subclause (2)
Page 62, line 4—

Insert the following new subclause:

(2)The parliamentary counsel may delegate a power under part 10.3 (Editorial changes) only to a person performing the duties of deputy parliamentary counsel in the public service.

29
Clause 111
Page 63, line 8—

Omit the clause, substitute the following clause:

111 Application of s 50 and s 50A

(1) Sections 50 (Notification of registrable instruments) and 50A (Effect of failure to notify registrable instrument) do not apply to a registrable instrument made before the commencement of this section if the instrument, or the making of the instrument, has been published or notified in the Gazette before the commencement.

(2) Sections 50 and 50A do not apply to any other registrable instrument made before the commencement of this section if neither the instrument, nor the making of the instrument, were required to be published or notified in the Gazette.

(3) This section expires 1 year after it commences.

30
Dictionary
Proposed new definitions of *authorising law* and *benefits*
Page 70, line 11—

Insert the following new definitions:

authorising law, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

benefits, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

31
Dictionary
Proposed new definition of *costs*
Page 70, line 15—

Insert the following new definition:

costs, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

32
Dictionary
Proposed new definition of *fee*
Page 70, line 24—

Insert the following new definition:

fee, for part 5.2A (Making of certain statutory instruments about fees)—see section 47A (Definitions for pt 5.2A).

33

34

35
Dictionary
Definition of *law*, proposed new paragraph (aa)
Page 70, line 29—

Before paragraph (a), insert the following new paragraph:

(aa) for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A); and

36
Dictionary
Proposed new definition of *provide*
Page 71, line 20—

Insert the following new definition:

provide, for part 5.2A (Making of certain statutory instruments about fees)—see section 47A (Definitions for pt 5.2A).

37
Dictionary
Proposed new definitions of *scrutiny committee principles* and *service*
Page 72, line 8—

Insert the following new definitions:

scrutiny committee principles, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

service, for part 5.2A (Making of certain statutory instruments about fees)—see section 47A (Definitions for pt 5.2A).

Schedule 2

LEGISLATION (ACCESS AND OPERATION) BILL 2000

Amendments circulated by Leader of the Opposition

1
Clause 28
Subclause (1)
Page 15, line 7—

After "the Speaker must", insert ", within 10 business days after the day the law is passed,".

2
Clause 28
Subclause (2)
Page 15, line 10—

After "must", insert ", within 15 business days after the day the law is passed".

3
Clause 28
Subclause (3)
Page 15, line 17—

After "particular day", insert " (not more than 15 business days after the day the law is passed)".

4
Clause 33
Subclause (1)
Page 17, line 13—

Omit the subclause, substitute the following subclauses:

(1) This section applies if—

(a) an Act authorises or requires the Executive to make regulations; and

(b) the Executive approves the making of proposed regulations under the Act.

(1A) The regulations may be made by 2 or more Ministers who are members of the Executive signing the regulations, if—

(a) the regulations expressly state that the Executive has approved the making of the regulations; and

(b) the responsible Minister is 1 of the Ministers signing the regulations.

5
Clause 33
Proposed new subclause (3)
Page 17, line 17—

After subclause (2), insert the following new subclause:

(3) In this section:

responsible Minister means—

(a) the Minister for the time being responsible for administering the Act; or

(b) if, for the time being, different Ministers administer the Act in relation to different matters—

(i) if only 1 Minister administers the Act in relation to the relevant matter—the Minister; or

(ii) if 2 or more Ministers administer the Act in relation to the relevant matter—any of the Ministers; or

(c) if paragraph (b) does not apply and, for the time being, different Ministers administer the Act—any of the Ministers.

6
Clause 104
Paragraph (1) (o)
Page 60, line 20—

Omit the paragraph.

7
Clause 107
Page 62, line 4—

After "powers under this Act", insert ", except a power under part 10.3 (Editorial changes),".

Schedule 3

LEGISLATION (ACCESS AND OPERATION) (CONSEQUENTIAL PROVISIONS) BILL 2000

Amendments circulated by Attorney-General

1
Clause 1
Page 1, line 4—

Omit "(*Access and Operation*)".

2
Clause 2
Page 2, line 3—

Omit "(*Access and Operation*)".

3
Clause 2, note
Page 2, line 6—

Omit "(*Access and Operation*)".

4
Clause 4
Subclause (2)
Page 2, line 14—

Omit "(*Operation and Access*)".

5
Schedule 1
Amendments 1.2 to 1.4
Page 3, line 6—

Omit the amendments, substitute the following amendment:

[1.2] Part 2

Repeal the part.

6
Schedule 1
Proposed new amendment 1.8A
Page 4, line 8—

Insert the following new amendment:

[1.8A] Section 11F (3), example 1

Omit the example, substitute the following example:

1 Section 13 (4) of this Act contains definitions of ***form 1*** and ***form 2*** as tagged terms. There is nothing in this Act indicating that the definitions apply outside section 13. The definitions, therefore, apply only to section 13.

7
Schedule 1
Amendment 1.14
Proposed new definition of *Act*
Page 4, line 21—

Omit "(*Access and Operation*)".

8
Schedule 1
Amendment 1.15
Proposed new definition of *commencement*
Page 5, line 4—

Omit "(*Access and Operation*)".

9
Schedule 1
Amendment 1.17
Proposed new definition of *disallowable instrument*
Page 5, line 10—

Omit "(*Access and Operation*)".

10
Schedule 1
Amendment 1.18
Proposed new definition of *enactment*
Page 5, line 14—

Omit "(*Access and Operation*)".

11
Schedule 1
Amendment 1.19
Proposed new definitions of *former NSW Act* and *former UK Act*
Page 5, line 19—

Omit the definitions, substitute the following definitions:

"***former NSW Act*** means a NSW Act mentioned in the *Legislation Act 2001*, schedule 1.

former UK Act means a UK Act mentioned in the in the *Legislation Act 2001*, schedule 1.".

12
Schedule 1
Amendment 1.22
Proposed new definition of *notifiable instrument*
Page 6, line 3—

Omit "(*Access and Operation*)".

13
Schedule 1
Amendment 1.22
Proposed new definition of *notification*
Page 6, lines 6 and 8—

Omit "(*Access and Operation*)".

14
Schedule 1
Amendment 1.23
Proposed new definition of *passing*
Page 6, line 15—

Omit "(*Access and Operation*)".

15
Schedule 1
Amendment 1.25
Proposed new definition of *provision*
Page 6, line 21—

Omit "(*Access and Operation*)".

16
Schedule 1
Amendment 1.26
Proposed new definition of *statutory instrument*
Page 6, line 25—

Omit "(*Access and Operation*)".

17
Schedule 1
Amendment 1.27
Proposed new definition of *subordinate law*
Page 7, line 1—

Omit "(*Access and Operation*)".

18
Title
Page 1—

Omit "(***Access and Operation***)".

Answers to questions

Haig Park—temporary fenced enclosure (Question No 325)

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

In relation to the temporary fenced enclosure located in Haig Park on Ormond Street, Turner:

(1) Who approved this enclosure;
(2) What is its purpose;
(3) Is the use consistent with the heritage listing of Haig Park;
(4) Will the park be restored to its original state once the enclosure is removed; and
(5) When is it anticipated that the enclosure will be removed.

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

(1) The enclosure was approved on 22 November 2000 by the City Rangers office of City Operations, in accordance with an 'Application for Temporary Use of Unleased Territory Land'

(2) The purpose of the enclosure was to store materials and equipment being used by a company which was digging trenches in Turner as part of the Transact cable rollout.

(3) The features intrinsic to the heritage significance of Haig Park, as stated on the heritage listing, are: fourteen rows of trees planted to form a windbreak and shelterbelt and the associated landscape setting. As those features were not affected by the temporary use of the area for storage, the use was consistent with the heritage listing.

(4) The park has been restored to its original state in accordance with the conditions of the approval. Specifically the area has been raked and reseeded with grass, and no damage has been caused to the trees.

(5) The enclosure was removed in early February 2001.

Gold Creek Country Club
(Question No 326)

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

In relation to the Gold Creek Country Club:

(1) What has prompted the proposal to realign three fairways on the golf course and what is the budgeted cost of this proposal.

(2) Were other alternatives such as the location of fences around respective tees and greens explored and, if not, why not.

(3) What is the comparative cost of providing fences around the respective tees and greens as opposed to realigning each fairway.

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

(1) The formulation of options to improve safety on parts of the Gold Creek Golf Course follows concerns expressed by a number of Harcourt Hill residents regarding golf balls being struck beyond the golf course boundary. As part of responsibly addressing these concerns, my department sought advice from three independent golf course architects on the layout of the golf course. Their advice highlights that there are areas of the course where the approved setback of residential development does not provide adequate safety.

The safety setback has largely been addressed by reclaiming areas of undeveloped land from the Harcourt Hill residential development. However, on developed areas such as holes 1, 2 and 8, other options need to be considered, including possible fairway realignments. In consultation with a golf course architect, my department has identified several options to improve safety on the affected holes. These options were discussed with residents of Harcourt Hill in December 2000, and further consultation is planned for early March 2001.

Funding ($750,000) was provided in the 1999-2000 Budget specifically to undertake remedial safety works on the golf course. Cost estimates of all options are being formulated and will be included in the discussion of options with residents. It is inappropriate at this stage to give weight to any one option over another, as feedback from residents, advice from the golf course architect, and cost will all be important criteria in selecting a preferred solution to improve safety.

(2) Several options have been identified for consideration. In addition to course modifications, feedback has also been sought from residents on the option of providing safety fencing on the affected areas of the course. Specialist advice indicates that fencing of tees and greens alone is not effective in reducing stray golf balls. To effectively reduce the danger of balls being struck into adjoining properties, fencing must also be erected along fairways. The visual impact of fences on residents will obviously need to be considered in assessing this option.

(3) Preliminary assessment has shown that the cost of protective fencing will be significantly greater than the cost of course modifications. A more in depth cost analysis is currently being undertaken. Figures will be provided to the member once this is complete. The cost of any remedial works on the golf course is an important consideration. More important however, is the selection of an acceptable solution to improving the safety of the public and residents.

Canberra Hospital—helicopter flights (Question No 328)

Mr Quinlan asked the Minister for Police and Emergency Services, upon notice, on 14 February 2001:

In relation to helicopter flights to and from The Canberra Hospital:

(1) In the last five years, how many flights to and from The Canberra Hospital helipad have:
(a) arrived; or
(b) departed

(2) At what date and time did each flight
(a) arrive; and/or
(b) depart

(3) In each instance,
(a) which helicopter was it that arrived or departed; and
(b)for how long did the helicopter remain idle prior to departure and following arrival.

Mr Smyth: The answers to Mr Quinlan's question are as follows:

(1) The ACT Ambulance Service maintains records for the Snowy Scheme SouthCare Helicopter, only, which commenced operation on October 1 1998. Since commencement of operation, Snowy Scheme SouthCare has landed at The Canberra Hospital on 493 occasions.

(2) & (3) To research and collate data on the arrivals and departures of the helicopter flights would be very time consuming that I am not prepared to authorise the use of considerable resources to answer the Member's question.

New Year's Eve celebrations (Question No 329)

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

In relation to how many staff were on duty for the purpose of cleaning up following New Years Eve celebrations in the past 3 years.

(1) How many staff were on duty for the purpose of cleaning up following New Years Eve celebrations on the following days:

(a) 31 December 1998 and 1 January 1999; (b) 31 December 1999 and 1 January 2000; (c) 31 December 2000 and 1 January 200 1.

(2) For the same days, what were the hours of duty for the staff rostered on.

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

(1)
(a) 31 December 1998 and 1 January 1999
There were 3 staff on duty on 31 December 1998 and 14 staff on duty on 1 January 1999.

(b) 31 December 1999 and 1 January 2000
There were 3 staff on duty on 31 December 1999 and 39 staff on duty on 1 January 2000.

(c) 31 December 2000 and 1 January 2001
There were 4 staff on duty on 31 December 2000 and 15 staff on duty on 1 January 2001.

(2)
(a) 31 December 1998 and 1 January 1999
On 31 December 1998 there were 3 staff rostered on duty between 5pm and 2am. On 1 January 1999 there were 14 staff on duty from 7.30am to 4.12pm.

(b) 31 December 1999 and 1 January 2000
On 31 December 1999 there were 3 staff rostered on duty between 5pm and 2am. On 1 January 2000 there were 39 staff on duty from 7.30am to 4.12pm.

(c) 31 December 2000 and 1 January 2001
On 3 1 December 2000 there were 4 staff rostered on duty between 8.3Opm and lam. On 1 January 2001 there were 11 staff on duty from 7.30am to 4.12pm and 4 staff rostered on duty between 7.30am and 3.12pm.

Land valuations
(Question No 330)

Mr Wood asked the Treasurer, upon notice, on 15 February 2001:

In relation to land valuation in the ACT:

(1) Was the outsourced contractor for the 1999 unimproved land valuation, Colin Porter (Vic) Pty Ltd?

(2) What was:
(a) the cost of the contract; and
(b) the duration of the contract at signature?

(3) Did the contract run its full term? If it did not, (a) was it terminated and (b) by whom?

(4) If it was terminated early, why was this so?

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

(1) The contractor for the 1999 unimproved land valuation was Colin A. Porter (Vic) Pty Limited.

(2)(a) The annual base cost of the contract for the provision of all valuation services to the ACT Revenue Office was $395 750.

(b) The contract was for a period of three years at signature on 24 October 1997. The contract commenced on the letter of acceptance from the Territory dated 16 October 1997.

(3) The contract did not run its full term and was terminated by mutual consent effective on 5 November 1999. The contract was terminated on behalf of the Territory by the then Commissioner for ACT Revenue, Mrs Tu Pham.

(4) Due to poor performance by the contract valuer in some aspects of the valuation contract relating to objection and appeal cases and the need to protect ACT revenue, the contract valuer was released from the final year of a three year contract by mutual consent.