DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

28 March 2001

Wednesday, 28 March 2001

Wednesday, 28 March 2001

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

Assembly business—postponement

MR BERRY (10.31): I seek leave to move a motion to reorder Assembly business at notice No 1.

Leave granted.

MR BERRY: I move:

> That:
>
> (1) Assembly business, order of the day No 1 relating to the presentation of standing committee reports on the draft budget initiatives take precedence after the presentation of any papers tomorrow, 29 March 2001;
>
> (2) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

I understand why this item of business is there: it is there because the standing orders require it to be given precedence on the notice paper. The reason I am moving this—and I have mentioned it to staff of the Manager of Government Business—is that we feel that this was a matter that ought to have been dealt with yesterday. The government decided that it was content to finish up at 6 o'clock yesterday and we did not get to the matter.

Mr Speaker, it is a matter that is more appropriately dealt with on non-private members business days and I have so moved.

MR STEFANIAK (Minister for Education and Attorney-General) (10.32): The only point I would make in relation to that, Mr Speaker, is that it was by consent, I understand, that the Assembly adjourned last night at the time it did. It was not through the unilateral action of the government. I think the Manager of Government Business, who is away today, made that point, and the opposition were quite happy with it, so we adjourned by consent.

There is another practical problem, Mr Speaker, and that is that Mr Smyth, to whom I understand some of these motions relate, is at a funeral. Obviously, he will get back as soon as he can. Also, we did not deal with about six bills which were also on the paper yesterday, and which will go over as well. I just wonder whether it might not be better to have this at a later stage today. I think it probably would be better just to get this out of the way. I think the government would actually want to see this out of the way.

Now, if people want to go on later tonight in relation to finishing private members business, that is another matter entirely. I think it is appropriate, given that my understanding was that we adjourned by consent at the time we did yesterday for this, to proceed now. The government will not be supporting Mr Berry's motion.

MR SPEAKER: Could I ask the whips to go and talk somewhere else please? Thank you.

MR KAINE (10.34): I support Mr Berry's motion on this matter. Today is for private members business. The matter could easily have been dealt with in a few minutes last night, but the Manager of Government Business moved the adjournment of the house. I do not know why he did that, but it could have been dealt with then.

It is noted on the notice paper as being Assembly business and there is a session for Assembly business tomorrow morning. It could be dealt with then, but I have no objection to it being dealt with after presentation of papers as Mr Berry is suggesting. I do believe that it is inappropriate for the government to try to usurp private members business time like this.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (10.35): I would indicate that I do not believe we should support this motion. As I understand it, this matter was actually put onto the provisional program, last night. Members would have been able to see last night that we were proposing to have this matter on the program this morning.

We all have telephones in our offices, so it would have been very easy for Mr Berry, who complained yesterday about people not ringing up and talking to him about things, to have used the telephone in respect to this matter. It would have been very easy for him to ring up and say, "We do not want to deal with this today. Can you put it off?" We might have been able to consider it. But again, Mr Speaker, this is another move by ambush. What is the problem that the opposition has in telling people that it wants to do certain things?

Mr Berry: I rang the office of the Manager of Government Business this morning and told his staff member.

MR HUMPHRIES: At what time? At what time, Mr Berry?

Mr Berry: At a little after nine, I suspect.

MR HUMPHRIES: Well, okay, in that case, I will withdraw. I did not know that you had done that. No-one has told me that you had been in contact with them. The standing orders require that we present papers as soon as they have been put on the table. This is not government business. This is Assembly business—

Mr Berry: That is tomorrow.

MR HUMPHRIES: And the Assembly business should have been presented yesterday. The house was adjourned, I understand, by the Manager of Government Business without opposition from anyone else in the chamber. I understand he went around the

chamber and suggested that we adjourn, and that there was no opposition to that proposition.

Mr Berry: Who would oppose? It is executive business.

Mr Quinlan: You did not say you were going to put this on first thing in the morning, though.

MR HUMPHRIES: Well, if you did not oppose it, then why is there a problem with the business, which should have been dealt with yesterday under the standing orders, rolling over today?

MS TUCKER (10.36): I will support this motion because I know how much there is in private members business today that we need to get through. It is true that Mr Moore did come and tell me last evening that we were going to stop at quarter to six, and I was surprised. I was expecting that we would continue through the evening.

He did not tell me that this would be brought up and dealt with today, because then I would have questioned it. I was prepared to work through last night to get through the business, and it was not explained to me at all that we would be doing this today. I do not know that it will take a couple of minutes. I think that there are some quite important issues to be discussed in the draft budget reports. Maybe other committees do not have a lot to say, but I know the education committee certainly should have some comments, so I do not think we should be doing it now either.

MR OSBORNE (10.37): My only concern is that, if we do not do this today—I am looking down the paper here—I understand Mr Smyth is away at a funeral, and notice No 1 is a bill for Mr Berry, then we have the censure motion—

Ms Tucker: No, that is not happening now.

MR OSBORNE: I am just saying this to you, okay? The next one is a workers compensation premium where Mr Smyth is the minister responsible. Then we have Totalcare, and Mr Smyth is the minister responsible. Then we have planning, occupational health and safety and land and planning, all in Mr Smyth's portfolio. Mr Berry's notice follows them, and I would assume Mr Smyth is the minister responsible there.

I do not know that we can move ahead with any of the private members business given that the relevant minister is away. There is really only one thing we could probably do this morning and that would be the surveillance camera legislation, because I understand Mr Moore is away as well.

I have no problem with doing the draft reports, given the circumstances we find ourselves in with Mr Smyth and Mr Moore away, and because they are the ministers responsible for a number of the items that are on the paper. I see Ms Tucker is on her feet before I have finished, but I am quite happy to hear from other members on what they think about this.

MS TUCKER: I seek leave to speak again.

Leave granted.

MS TUCKER: I just want to explain something to Mr Osborne. I was rung by the Manager of Government Business last night, who asked me to move a motion to defer the censure motion until later today, because Mr Smyth would not be here as he was going to go to a funeral. But, if his presence is essential for every other debate then I imagine that he would have also made that communication to other people who are putting business on the notice paper. I do not understand that that has happened, so I am assuming that the government has accommodated the fact that he wants to go to this funeral of a former member of the Heritage Council and that it is workable.

When he rang me there was even a flexibility about it on the part of the Manager of Government Business in terms of whether or not Mr Smyth would go to the funeral. He was saying that, if I insisted on doing the censure motion then, he would not go because there was some flexibility there. I do not quite agree with how you are seeing it. That is not the impression I had from Mr Smyth. We would just have to adjourn the whole place if he cannot be here and everything on the notice paper requires his presence.

MR OSBORNE: I seek leave to speak again.

Leave granted.

MR OSBORNE: Just on that point, we all went through a wasted day yesterday when the Assembly was under the watchful eye of Ms Tucker, who made the decisions. We try to make sensible decisions here on this side of the crossbench.

All my negotiations with the government in relation to my workers compensation motion have been with Mr Smyth. All my discussions regarding Totalcare have been with Mr Smyth. All my planning discussions have been with Mr Smyth. I think it is only fair that he be here when these things are debated. I do not mind. I am quite happy to—

Mr Quinlan: What are we going to do this morning?

MR OSBORNE: We could do the draft budget initiative, but, as I said, I am not going to die in a ditch over it. I am just stating my opinion, which I thought I was allowed to do.

MR BERRY (10.41), in reply: I am closing the debate, Mr Speaker.

MR SPEAKER: Yes, indeed.

MR BERRY: I just want to clarify a few things. I think Mr Humphries said I should have been waiting for a phone call about this in my office last night. I do not know what time my office was phoned. A signal has come from the gallery, Mr Speaker, that it was at 7 o'clock.

MR SPEAKER: It should not.

MR BERRY: It should not indeed, but it was a worthwhile signal because it helped me out. It was at 7 pm and I have to confess that, by then, I was at home watching the ABC news and I think I was halfway through a can of beer. I apologise to Mr Humphries for not having the phone under the pillow, or the computer on, but I did not check my emails at home and I would not expect to get them there anyway.

In any event, I rang this morning when I learned about this and told the staff of the Manager of Government Business that we would resist this. The reason that it is on the paper is not because of any agreement with the opposition or any need for discussion between us and the government or anybody else for that matter: it is required to be there by the standing orders because it fell off yesterday.

So far as arrangements between us and the government are concerned, if the government does not want to pursue its executive business it is usually my position, unless there are some special reasons, that we should let the government have its way. I expect the government to deal the same way with us when it comes to private members business and let us have our way about how we deal with that. That is usually the way that this place operates.

This is not a life or death issue. I just think it will clutter up the business. So far as Mr Smyth's appearance here is concerned, I am informed this morning that Mr Humphries will be dealing with Mr Smyth's portfolio matters. My office has been informed accordingly, so there is no need to be concerned about Mr Smyth not being here except, of course, for the censure motion. I would expect him to be here for that.

I do not know the circumstances of Mr Smyth's obligations outside of the Assembly but, if he is attending to this matter as a representative of government, perhaps that ought to have been taken into account by the government when Mr Smyth was chosen to represent them. I say no more than that on that particular subject, but I just do not think that there is any reason not to do this tomorrow. It will involve a bit of debate, because I am absolutely sure that there are members who will want to say something about the process. We cannot avoid that.

I think it should be carried over until tomorrow and dealt with then. We are already faced with a late evening. If, at some time later this day, we can see that we have got through the private members business satisfactorily, and the government wants to bring it back on, then they should come and see us.

MR RUGENDYKE: I seek leave to speak even though the debate has been closed. I apologise for not jumping gazelle-like.

Leave granted.

MR RUGENDYKE: Thank you, Mr Speaker. We have a busy couple of days, I know. I think the point has been made that, technically, this should have been on tomorrow's program. I do not care whether it is debated today or tomorrow. I do not mind supporting the motion, but I hope no-one comes to me tomorrow whingeing that they want to go home early.

Question resolved in the affirmative.

Education Amendment Bill 2001

Mr Berry, pursuant to notice, presented the bill.

Title read by Clerk.

MR BERRY (10.45): I move:

> That this bill be agreed to in principle.

This bill seeks to amend the Education Act 1937. The aim of the amendment is to strengthen the ability of school principals to protect students in our schools, in both public and private sectors. It allows school principals or their delegates to request a person to leave school premises on a school day within one hour.

When I first proposed this amendment, the minister cited powers available to government schools under the Crimes (Offences against the Government) Act 1989. This bill will apply to all schools, not just government schools, and it is located neatly within the Education Act. This upgrading of protection for students in all of our schools will allow the principals, or their delegates, to order anyone who does not have a reasonable excuse for being on school premises to leave. If they fail to do so, they will be subject to police action and penalties.

When I proposed this in November last year, we were faced with a report of a violent brawl at a southern high school, an incident that highlighted the need for the protection being emphasised in this amendment. It is merely a commonsense approach and one of our corporate responsibilities as legislators, that is, ensuring that our citizens are protected and, in particular, that our children are protected while at school. I urge members to support this bill.

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

Postponement of notice

Ms Tucker, pursuant to standing order 128, fixed after the presentation of papers today, Wednesday, 29 March 2001, for moving the motion relating to the proposed censure of the Minister for Urban Services.

Workers Compensation Premium

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

> That the government set a maximum rate of 15 per cent as the workers' compensation premium payable by the group training companies.

MR BERRY (10.48): This matter emerges because of difficulties being experienced by training companies in the ACT in responding to their workers compensation payments, and the impact that this could have on future training possibilities in the ACT.

I heard an official of the Master Builders Association on the radio recently drawing attention to skill shortages in the construction industry. It is this type of skill shortage that we have to be particularly careful about in the ACT with the ebb and flow of the economy. We noticed it particularly with the Sydney Olympics, when a lot of our tradespeople left the ACT and went to Sydney. Some will come back, or come and go, as conditions ebb and flow in the ACT.

But inevitably, it is our responsibility to make sure that there are young trained tradespeople making themselves available for the industry in the ACT. If we do not do that we let ourselves down, force costs up and the impact will affect our society generally. Mr Osborne's proposal is for the government to set, and I quote from his motion, "a maximum rate of 15 per cent as the workers compensation premium payable by the group training companies".

This is not something that is new, and it is not a problem that has just cropped up. It is something that the government has been well aware of for some time, and it is disappointing that we have not heard anything from the government in relation to the matter. Therefore, of course, there has been a reaction from people in the community, and Mr Osborne has quite rightly responded to pressure from within the community, and particularly the training company community, to deal with this issue.

Members should be aware that the training company that most affected at this stage is the construction industry training company, CITEA, and its insurance company is HIH. HIH has been in the news lately because it did take over FAI and, I think, the last I heard about HIH was that it had been delisted from the stock exchange and so on. So it is in a bit of financial trouble. But, all of that aside, the policies that these companies have been setting for CITEA, and the policies that are generally flowing into construction companies, are problematic because of their impact on training.

Now you might ask, "What will this cap do?" I think it will focus people's minds. I think that is the most important thing. We have to focus people's minds on this as a problem. The insurance companies did not care much about it, because all they were doing was running a book on the risk in the construction training companies and other training companies, and setting their premiums at whatever they calculated was the risk in respect of those particular employers.

The difficulty for the training companies is that their trainees end up on job sites with host employers and that is where they are being injured. I have a particular difficulty with the employer on whose job the injury occurs not bearing some responsibility for the injury. This cap does not deal with that issue, and I would say to the government that, while we intend to support this motion today, it does not relieve the government of the responsibility to look for other innovative arrangements to deal with this.

I do not have any particular visions about how you might deal with that, but I can give you one example that you might look at anyway, and that is in relation to the Nominal Insurers Fund. Arrangements could be developed that would use a fund like the Nominal Insurers Fund, or indeed the Nominal Insurers Fund, to deal with the insurance premiums for workers compensation in training companies. This would mean that the whole of industry would bear the responsibility for the insurance premium pool.

That is much fairer than the training companies bearing all of the responsibility, because very few of these trainees and apprentices and so on are injured with training companies. They are injured out on jobs where they are taken on as apprentices and trainees. I just throw that one in for the government to consider. I think that this, or a proposal along those lines, is something that is worth looking at.

I want to return now to the issue of the maximum rate of 15 per cent. I think I said earlier, that it is a fairly blunt instrument and it is not very sophisticated. But I do not think anybody should apologise for that, because there needs to be something to focus the minds of people on dealing with an issue which is affecting training companies out there in the community. I have consulted with people fairly widely on this. I have had the insurance companies come to me, and they do not like it. I am not surprised they do not like it.

There is good reason for discomfort about the issue, because it is an intervention by government into the marketplace, and I can understand why the government will say, "We do not want to do that." I have some hesitation about that too. I think we all have, but we have to do something about this particular problem and the government has to come up with an answer to deal with it. We will be offering this 15 per cent as a solution, but that should not prevent the government coming up with flexible options to deal with the issue in some other way.

I do not want to speak for Mr Osborne, as I am sure he can speak for himself, but I think that everybody here would be prepared to listen to anything which deals with the issue. It is the issue, not the brand name that is on the solution, which is at stake here. We have to find some way of dealing with it.

What I propose to do is circulate an amendment, which I have not done yet because I have been considering the form it should take. I will do it as soon as I sit down. My amendment stipulates that, if the government adopts a maximum rate approach to the workers compensation premium, there must be a sunset clause on it, so that we revisit it. I want to make sure that the next Assembly revisits this issue, and we do not let it slide off the agenda.

I think we have a chance to consider the performance of the workers compensation system in the ACT against the background of information we should have collected with the system that has been put in place by the government to collect information about workers compensation. I understand there are some problems with the database as we speak. I do not think it is completely operational at this stage, but a lot of work has been put into it, as I understand it. I hope to be able to question the minister more on that some time later.

What I propose to do is to amend this motion to ensure that, if the maximum rate approach is taken, there is a sunset clause to ensure that we revisit the issue at some time in the future. I think that is extremely important. Leaving aside the politics of the place, we, as a group of legislators in this place, have an obligation to look to our future, and our future is in education and training, there is no question about that.

These training companies perform an extremely important function out there in the community. In the past, training companies for these purposes did not exist, but they are a growing feature of the industry landscape now, and it is up to us as legislators to make sure that they do not collapse because of the unintended consequences of an insurance system that is market based. I do not think any of us would support an insurance system that would bring about the collapse of companies such as these, particularly in the knowledge that they are bearing the costs, in terms of insurance premiums, for injuries that they have no real control over. This troubles me somewhat.

I have the view that, if somebody is responsible for failing to keep a safe workplace, or for an injury in the workplace, then they ought to bear the financial responsibility. I think that is a fair view. This particular proposal does not deal with that. (*Extension of time granted.*) This is one way of dealing with it, but I would ask the government to address themselves to other issues and, if there are alternative approaches that they think will work, I am happy to discuss these with them, with a view to coming up with a long-term solution. As I said, I foreshadow an amendment to limit any capping of these rates for two years.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (10.59): Mr Speaker, let me just say at the outset that I would support the principle of a sunset clause, which Mr Berry has made reference to in this debate. I think it is very important that we consider the effects of such legislation after it has been in place for a while.

The government will not support the motion that is before the Assembly today. The government, I put on the record, is very conscious of the problem, to which Mr Osborne has drawn attention, and to which Mr Berry has referred this afternoon, of the escalating cost of obtaining workers compensation insurance for the organisations referred to in this motion. We would dearly like to be able to provide a framework that ensures that such businesses—which is what they are, essentially—do not have to experience the threat of going out of business.

The group training companies are very important organisations, not just in terms of dealing with the requirement for well-trained and skilled people to serve in industry, but also, of course, in terms of fulfilling the career expectations and requirements for those young people—as that is what they are, almost invariably—who go through those group training companies.

I take the point Mr Berry has raised about the need for alternatives to be put on the table if we are not to adopt the course of action proposed in this motion. I have to say I do not have any alternatives, at least none that we could profitably discuss at this stage but, notwithstanding that, I think we have to be very cautious indeed about taking up this option merely because there appear to be no other options.

The impact of this motion, if passed, would be immediate and negative, particularly with regard to people who take part in the process of providing insurance in the area of workers compensation. We need to take the effect of that signal into account in deciding what to do about this motion.

The proposed changes would not remove the cost associated with the injuries in this particular industry if it simply moved them somewhere else, for someone else to pay. Mr Berry has, I think, rightly made the point in this debate that we do not wipe out the costs associated with claims under workers compensation legislation by virtue of passing this motion and, indeed, by having the government regulate premiums in the way that the motion foreshadows. We do not wipe out those costs, but simply transfer them from the person who, as Mr Berry suggests, is actually incurring them—the employer—on to the employer's insurer.

Now, the employer's insurer does not have any mechanism to control the level of care and diligence that an employer exercises, except through the setting of a premium. If an insurance company sees somebody in the workplace who is incurring many claims because of frequent accidents in their workplace, then their recourse to that person is to say, "If you are going to make lots of claims, we are going to put up your premium so as to ensure that you have some incentive to do something about these claims."

The employer has to go off and improve safety in the workplace, or ensure that rehabilitation occurs more effectively for those workers who are injured in order to reduce the claims history and improve the performance of that workplace. The very important incident of that improved performance of the workplace is that workers in that workplace are not injured as often or as badly. At least, that is the expectation that you would have if that pressure is applied by an insurer.

I do not, for one instant, suggest that the group training companies concerned here, with some pressure taken off them about their performance in this respect, are likely to start forgetting about the need for hard hats, taking down necessary signs or not bothering about rehabilitation, knowing that there will be no cost implication for them in doing that. I am not suggesting that for a minute.

But it is important that we send a signal to employers in industry that they must be continually improving their performance in this area, and the employers here, the group training companies, are no exception to that. They need to be told that, if they do not do that, they will be expected to suffer some penalty. But, by passing this motion today and setting a maximum rate of 15 per cent, we are effectively telling those group training companies that there are no consequences of their failing to be diligent about these matters.

I am not overly concerned about that in this particular case. I do not have any reason to believe that the group training companies concerned would be inclined to go around reducing the level of care and attention they pay to matters of occupational health and safety. However, I wonder what signal it sends to others in the community.

In particular, I wonder what will happen in the event that other industries important to the ACT—and of course, in a sense, every industry is important to the ACT if it employs people—encounter significant increases in their premiums and come back to government or the Assembly and say, "You know how you helped the group training companies? Well, our industry is really important as well, and we have young people working in our industry, and if we do not get some relief from higher premiums we might go out of business." What do we do then, Mr Speaker?

Perhaps we need to address the threshold question of what steps we would take to differentiate the group training companies here from those others that would, I suspect, inevitably come through the door once we have provided this relief to these particular people.

I do not know what the response of the insurers will be to this step fixing a maximum rate of 15 per cent. My understanding is, and I am open to being corrected about this, that those who offer insurance in the ACT have an obligation to offer it to anybody who is prepared to pay the premium, so the option of a company simply saying, "We are not going to carry this sort of insurance anymore," is not available.

So if a business is actually operating and providing insurance to companies or businesses in the ACT, they must insure a person who pays the premium. Their protection, up until now, has been that they can charge a premium that reflects the difficulty of offering insurance in that area. With the passage of this motion and the change in the law, that option disappears. I suppose that, given the state of play as I understand it, it would then be necessary for an insurer wishing to avoid that liability, that necessity to insure a person in these circumstances, to actually evacuate the ACT altogether, that is, cease to insure anybody in the territory, in order to escape that liability.

I suppose I have to say that Mr Osborne has carefully assessed this matter and has made the judgement—probably one I would agree with—that an insurer, or a few insurers, who cover the small number of group training companies in the territory—I think there are three, but I would not be dogmatic about that—would not want to pull out merely because they were running a loss on those three companies. That is what I suppose would be the reaction of those companies but, of course, I do not know.

I do know that the companies concerned, or at least one of those companies, has very serious concerns about the proposals. I will now quote from a letter that Allianz Australia Insurance Limited wrote to the government about this matter, in which they have argued that this measure would be a serious erosion of the principles under which insurance is offered in the ACT in terms of workers compensation. (*Extension of time granted.*)

The author refers to legislation here, but I assume he means the motion. This is a letter from Mr Michael Taig, General Manager, Underwriting Operations, Workers Compensation Division, Allianz Australia, to Mr Craig Simmons in the Department of Urban Services. He says:

> Additionally legislation should describe the underpinning principles for premium setting. We are detailing in the attachment what we believe are fundamental principles; these are based upon the principles agreed by the key stakeholders involved in the New South Wales reform process during 1998.

And he goes on further to say:

> If the private member's bill is being advanced with the objective of protecting employment in ACT then we feel the causation of the problem (ie poor claims history) should be addressed rather than trying to treat the effect (ie potentially high insurance premiums).

I think it would be appropriate for members to consider that, and in fact I table that letter and the attachments to it. I present the following paper:

> Workers' compensation premium rate control—Facsimile copy of letter, including attachment, from General Manager - Underwriting Operations, Workers Compensation Division, Allianz Australia Insurance Limited to Workers Compensation Policy, Industry Policy and Regulation, Department of Urban Services, dated 16 March 2001.

I simply indicate that I believe we need to be very cautious about this. We need to be cautious about the effect on insurers. It might not be a significant effect on these few insurers who are affected here, but I just do not know. I do not know what they would do if they feel that the Legislative Assembly of the ACT is prepared to make this a habit.

I do not know what signal it will send to employers if they think that they might be able to escape the effect of higher premiums and arguably, therefore, the effect of poor management of the matters that cause high premiums, by being able to come to the Assembly and have a cap placed on the premiums that they pay. I do not know what kind of effect it will have on workers, who, you could argue in an extreme case, might be exposed to greater risk in the workplace because the employer was no longer required to meet the consequences of poor practices in that field.

As I said, I support the idea of a sunset clause. I see Mr Berry is proposing a period of two years. That is better than nothing, but I think it is important that the government place on record its significant concern about this motion. It will clearly pass as I understand the numbers on the floor today, and the government will consider what we are to do in light of that.

Again, we have a slightly ambiguous wording of the motion: "that the government set a maximum rate of 15 per cent". I am not sure whether that is meant to be mandatory for or advisory to the government. I think we would treat it as mandatory, but that is a matter that the government will consider on the passage of the motion.

I sincerely hope that we do not have to come back at some point in the future and say, "We told you so," if something dire has happened, but it is worth putting the matter on the record, so that we can reconsider it when we have some experience of what actually happens when this measure is taken.

MR KAINE: I seek leave to speak again, Mr Speaker.

Leave granted.

MR KAINE: I am speaking to Mr Berry's amendment, Mr Speaker. I have indicated before that I do not support this proposal, and Mr Berry's amendment does not make it, in my view, any more plausible. I think that the members of this place—as the Chief Minister suggested—need to take this sort of proposal with great caution, because what we are doing, if we pass this motion, is setting a precedent where this place, at somebody's request, can fix the price of anything.

Today it happens to be insurance, and it happens to be insurance for a select group of people. But tomorrow, if this is successful, as the Chief Minister foreshadowed, anybody can come to a member of this place and say, "We think you should fix the price of a litre of milk at 50c. Don't be worried about what it costs to produce the litre of milk. We think you should fix it at 50c." That would be just as rational as what Mr Osborne is asking us to do here.

I am not in the milk production business and I do not know what it costs to produce a litre of milk. Mr Osborne is not in the insurance business and does not know what it costs to provide insurance of any sort. We could have somebody come in and say, "We want you to fix the price of petrol in the ACT at 50c a litre." If we do this today, what justification could we have for saying to those people that "it is not our place to do that".

It is not our place to intrude into the marketplace and fix the price of anything, unless all of the facts are put before us, and in this case we have no facts. We just have the assertion that a group of people are finding it difficult to pay an insurance premium.

Mr Berry: I will table some facts, then.

MR KAINE: What happens if tomorrow somebody comes here and says, "We cannot afford to pay insurance on our houses. We want you to fix the maximum price of house insurance at 7 per cent or 8 per cent. We cannot afford to pay to insure our motor vehicles against damage. We want you to fix motor vehicle comprehensive insurance at 5 per cent." If we agree to this today, we are setting a precedent for that sort of request to be made, and on what basis do we reject it?

If we are no better informed on those matters than we are on this one, how could we arbitrarily reject any such request once we have established the precedent. This is capricious and, if we approve this, it is legislating on the run with no information or justification whatsoever, except that a group of people have said, "We find the insurance premium too high."

I do not know the full argument, or whether it is too high, but I submit that the proper place for this to be considered is not on the floor of this house, but by reference to our pricing watchdog, our pricing regulator. Ask him to do a review of insurance premiums in the ACT and give us an opinion, after proper review, as to whether the rates of insurance are too high, too low or just right.

It is not for us to determine it. We are incapable of doing that sort of a review, and I submit that we ought not to be moving motions and passing motions putting into effect decisions of this place on such little information, and with such little justification. If we do, I think we are building a big black hole for ourselves to fall into in the future, and it will create expectations on the part of consumers out there that we will address any question that is put to us in terms of price fixing. That is not our role. We have deliberately set up a body to do that for us.

I would suggest to Mr Osborne that he withdraw this motion and, instead, seek the reference of the matter to our pricing regulator where it ought to be reviewed, so that that authority can come back to us with a reasoned debate, based on factual information, as to whether or not the present rates are too high. The bottom line in this particular matter

is—and Mr Humphries alluded to it—if we fix this rate of 15 per cent without knowing anything about the matter at all, how long will it be before the insurance companies say, "We will not insure anybody in the ACT for this purpose." They will just walk away from the insurance business.

There will be no insurance company, and I would not blame them for saying, "We cannot afford to insure against this risk for 15 per cent and therefore we will vacate the field." It has happened before in the motor insurance business where, at one stage and for some years, there was no insurance company in the territory that would insure a motor vehicle, except the NRMA. So we have had the experience before, and I think that some of us should have learned a lesson from that. For those reasons, I find this quite irrational. I believe that it is not our place to fix a price in such a way, and I will not support it.

I must say that Mr Berry's amendment to it damps it down a little bit by putting a sunset clause on it, but I would have thought that two years was a bit too long, because by that time we probably will not have an insurance company that is willing to take the insurance. I am opposed, in principle, to the legislature acting in such an irresponsible fashion, Mr Speaker.

MR BERRY: Mr Speaker, I seek leave to move the amendment circulated in my name.

Leave granted.

MR BERRY: I move the amendment circulated in my name:

> Add "and furthermore that the operation of any maximum rate so determined be limited to a period of two years".

Speaking briefly to it, I have some information which I have not circulated to Mr Kaine and I am sure that, once he receives it, he will be as concerned about the consequences of doing nothing as I am. We have to do something.

I must say, I share his concerns, but not to the extent that Mr Kaine has expressed them. Let me just point to a few issues here. I have in front of me a letter to the Leader of the Opposition, Mr Stanhope, from CITEA, the Construction Industry Training and Employment Association, which contains a table.

As an example, in the 1995 policy year, their insurance annual premium was $62,352. In the 2000 policy year, it was $415,000. That is an extraordinary increase and it has jumped from, as a percentage of their wages, 9 per cent in 1995 to 25 per cent on a payroll of $2.5 million.

Mr Humphries: Why has it gone up?

MR BERRY: The insurance companies basically run a book on the risk, and their assessment of the risk is that high, so they have put that sort of premium price on it. It is just about running a book on the risk.

As I said earlier, I am concerned that this is a blunt instrument, but something has to be done or these training companies are going to start folding. Bear in mind, too, that the government used to pay a subsidy to training companies and that has been discontinued. Now, that subsidy having been discontinued does not help things much either.

I am not a great supporter of subsidies on these issues, either, because they tend just to drive the prices up in many cases, in my view, as a matter of principle. But it would be better to have a subsidy than not have one in this case, where one of these training companies may go belly-up, as they have done in other places. I have a press release in front of me from the *Australian Financial Review* about a crash in Western Australia in which one of the training companies went belly-up.

For the interest of members, I seek leave to table the letter and the attached table, which sets out graphically how the problem has developed.

Leave granted.

MR BERRY: I will hand it up in a moment.

MR SPEAKER: Very well.

MR BERRY: Essentially, all I am saying is that the option is not there for us to do nothing. Mr Humphries draws attention to the question of whether this is mandatory. Of course we want something done; that is why we support the motion, and we expect the government to do something. But, as with all motions in this place that direct the government, we expect the government to respond positively to those expressions of the Assembly's will. However, if the government has a better idea, we will listen to it, as I indicated earlier.

We will also listen to the insurance companies, if they have a better idea. As I said, one idea might be attaching these companies to some sort of special fund that will deal with this insurance, so that the obligation for the premium is spread across the industry that causes the increased risk, which the insurance companies have assessed and on which they have accordingly based premiums imposed on the training companies.

Those are the issues that have to be addressed. I have the basic view, and I express it again, that the people who injure workers ought to be the ones who are responsible for the outcomes of those injuries, that is, premiums and penalty clauses wherever they exist, for example, in occupational health and safety legislation.

MR HIRD (11.24): I think that what Mr Kaine was referring to was something that, as legislators, we all have to take into account. That is a past history, and I know that Mr Osborne, to his credit, is probably trying to work through this very, very vexed issue.

Mr Kaine points to an issue that you would recall, Mr Speaker, that is, the NRMA third-party insurance and the problems we had in this territory, not for months, but years. It went for years. Even today I doubt whether we could fill the void if the NRMA walked away from our third-party motor insurance.

Mr Kaine has made a suggestion to our colleague Mr Osborne with respect to withdrawing the motion and sending the issue across to the pricing regulator, and I think that is something that Mr Osborne may have overlooked. It is for Mr Osborne to make that decision, but I think those are wise words from Mr Kaine.

On 7 December last year, the Minister for Urban Services, Brendan Smyth, tabled in this place a draft exposure bill to amend the Workers Compensation Act 1951. The bill is an attempt, on the part of this government, to develop a consensus about how to take forward these difficult areas of public policy. At this time, December last year, the minister offered all members of this place and the community the opportunity to meet with him or officers of his department to discuss the proposed reforms.

Minister Smyth has informed me that many in our community have taken up the offer. In fact, the government has contacted 17 peak bodies, had over 20 meetings with stakeholders, and received more than a dozen written submissions to date. There have been many meetings with both the minister and officers of the department, and in some cases key stakeholders have also met with the Chief Minister, Mr Humphries.

However, Mr Speaker, there is one group within this community that to date has neither asked about, or sought, to meet with either the minister or officers of his department. I am sad to say that that group, Mr Speaker, is members of this place.

Not one non-government MLA has sought the advice of the minister or his departmental officer, so they could grasp an understanding of the proposal to reform this legislation. It is an important piece of legislation, as Mr Berry said, yet as we assemble here today, we are prepared to make a fundamental change to legislation with barely a second thought to the consequences of our actions as legislators.

I ask members of this place, is this the legacy that we want to leave to our successors after 20 October this year, or do we want to leave a legacy of careful and considered legislative development, designed not to aid narrow sectional interest, but the whole community?

Problems have occurred in this place in the past as the result of rushing and pushing legislation on the run. We have had to revisit legislation, and the children's magistrate area is just one that I could mention as an example. The action taken in this place will affect the whole of our community, and I agree with the Chief Minister, who warned about taking up the option, and said that we should rethink it to make certain that we are on solid ground.

I also refer to what Mr Berry said when he referred to the failure to wipe out costs, and simply transferring them from one business to another. When we analyse the whole complexity of the issue, it is obvious that we, as legislators, must be extremely diligent when addressing this type of matter. Not only does it have ramifications for the whole community, it also involves financial obligations that will go on and on, and cost dearly. We should learn from our past mistakes, Mr Speaker.

MR STANHOPE (Leader of the Opposition) (11.30): Mr Speaker, I rise to support the comments made by my colleague Mr Berry in relation to this matter. Mr Berry has established quite clearly some of the concerns that we in the Labor Party have about this proposal and some of the issues that weighed very heavily with us in the decision we made to support this proposal subject to a sunset provision. It is a difficult issue and I think we need to put it into context.

The government has had ample opportunity to respond to the danger and the risk being faced by the group training schemes. One of the concerns we have and one of the motivations for the motion and for our support of it at this time is that on advice to us, particularly from CITEA and to a lesser extent from the MBA, the two group training companies that we have here for the construction industry cannot persist or exist into the future almost exclusively because of the rise in workers compensation premiums that they are facing.

Mr Berry has just indicated the nature of the increase in workers compensation CITEA has faced over the last five years. Over the last five years it has gone from a workers compensation premium of $62,000 to one of just on half a million dollars. The MBA had an increase of $120,000 from last year to this. That was a $120,000 increase which they had not budgeted for.

So what does CITEA budget for next year? It is half a million dollars this year. It went up a couple of hundred thousand dollars. Do they now budget for $600,000 or $700,000? What do they budget for for next year? CITEA budgets for $700,000 next year. What does the MBA budget for? The MBA more than doubled. Do they now budget for $400,000 for next year? This cannot go on. It cannot persist. There is only one outcome from this and that is the outcome that faced the MBA scheme in Western Australia.

The scheme in Western Australia, the future skills group training scheme run by the MBA, collapsed when its premiums increased from $400,000 to $1.2 million. It closed and it left 374 apprentices without a future and a promise by the Western Australian government to ensure the future of those 374 apprentices. I wonder how they did it?

As I understand it, we have a total of about 250 trainees and apprentices in the two group training schemes here. In the context of this, when the CITEA group training scheme closes next October when they are asked to pay, say, $400,000 in the next instalment, is Mr Humphries promising to secure the future of the 150 apprentices and trainees currently employed under that scheme? Is this government promising to secure the future of those apprentices in the way that the Western Australian government promised to secure the future of its apprentices? What promise is this government making about that?

Does this government care? Do we have so many apprenticeships or positions available for those young men and women who seek a career in the construction industry, that group of young Canberrans who have not chosen a tertiary career but have chosen to enter the construction or the building industry, a not particularly expansive or large industry sector in this town? What plans does this government have for ensuring the future of those young people from our families who seek a career in the building or

construction industry? What does this government think or care about the future of the construction industry in the ACT? How important and how vital to this sector is the training of the next group of builders, construction workers, project managers and bricklayers?

Mr Humphries: I answered all those questions earlier in the debate but you were not here.

MR STANHOPE: I was listening.

Mr Humphries: You heard me answer those questions then.

MR STANHOPE: I was listening, minister, but you didn't answer. Will you secure the future of these people if CITEA and the MBA scheme collapse? What will you do for these 250 young Canberrans part way through their training? What will you do for them? Will you guarantee them a future? You have had an opportunity to respond to this looming crisis and you have not responded. You have done nothing. You have known that this day was coming. You know that this increase in workers compensation premiums is simply unsustainable by the MBA and by CITEA. They cannot go on like this. Something has to be done.

Mr Hird, in his prepared speech, or the speech that was prepared for him, referred to the draft exposure bill on workers compensation. To what extent does that bill resolve these issues? Mr Hird makes the point, the government makes the point, that the draft bill that has been tabled will resolve this issue. Let me tell you now that I have looked at the bill. It will not resolve this issue. It will not solve the problem. The draft exposure bill will not resolve this issue or these difficulties.

Recently I have been complimentary. I praised the process that the Chief Minister engaged in in relation to the commercial and retail tenancies legislation. There was a very significant process of negotiation. All the stakeholders involved in the development of that legislation were involved. After listening to Mr Hird in relation to the government's proposals for taking forward the tabled workers compensation bill, it comes to mind that perhaps we do need to look at the establishment of an expert working group on workers compensation because I can tell you now that the tabled bill, the exposure draft workers compensation bill, will not resolve the issues facing this community in relation to workers compensation. It is a bill which will satisfy nobody. It is a bill which attempts to deal at all edges with all of the issues facing all of the different sectors concerned about workers compensation and the impact on the town.

Mr Humphries: So how would you fix it, Jon?

MR STANHOPE: Well, I am just making a suggestion, Chief Minister, if you would only listen. I actually complimented you on a previous approach that your government had taken and suggested that you need to focus on that sort of approach in relation to workers compensation. It is a difficult, complex and—

Mr Humphries: We have been, actually. We have done the same thing.

MR STANHOPE: You have not. If that bill is the result of a process that matches or mirrors the process that you engaged in in relation to the commercial and retail tenancies legislation, then you have failed dismally, or your consultative group has failed dismally if that is what you are suggesting to me. If that bill is the outcome of that sort of consultation process, I would like to see who it was that you consulted, what their interests were, and exactly how expert they were in issues around workers compensation. It is a difficult and almost intractable problem that the community is facing, and I do not think your proposals are going to resolve it. You have had an opportunity to deal with this specific—

Mr Humphries: So what are your proposals?

MR STANHOPE: Here is a proposal now that we are debating. We have now been forced to debate this proposal because of the fact that you sat on your hands and did nothing. That is why this motion has been brought forward today. We cannot delay it any longer.

We cannot sit back and allow these two group training schemes to fold. That is in nobody's interests. It is not in the interests of the 250 apprentices who are involved. It is not in the interests of the construction industry. It is not in the interests of Canberra to see a major industry sector such as this denied access to its next round of skilled and expert participants, namely, the apprentices and the trainees that are the product of these training schemes. It is vital that we maintain our edge in this sector, as in all other sectors. These people are the future of this industry sector, and we are risking their futures by not supporting their training and their education.

You had an opportunity to do something about it. As Mr Berry has explained at some length, we would welcome some indication from the government about what it can do to assist these schemes to remain viable and continue to train these kids.

In the absence of any leadership from the government on the issue, Mr Osborne has moved a motion which the Labor Party will support, despite the fact that we are concerned at this interventionist approach, but we are left with no option. It is a signal to the government to show some leadership, to do something, and to ensure that these training schemes do not collapse and put these 250 people at risk.

I think we would have preferred another way. The Labor Party in a way would prefer not to be supporting this motion. We would have preferred that it did not come to this. We would have preferred that the government show some innovative and strategic leadership and support this industry sector and these young people through these training schemes.

MR SPEAKER: The member's time has expired

MRS BURKE (11.40): Before agreeing to these changes this Assembly must consider what it is doing and what it is saying in relation to the duty on employers to do the right thing by their workers. What does this change say about the duty of care owed by employers to their workers? The question we must ask ourselves is not just a practical question, but a moral question.

Is it right to say to employers that there are to be no consequences for you if you harm or injure your workers, because no matter what you do you cannot be made to pay more than 15 per cent? Surely this rewards bad workplace practices over good. Is it right to say as a community that we accept that you are a bad employer and that you injure your workers, but do not worry about that because the ACT Legislative Assembly said that this is okay; in Canberra we make businesses which demonstrate a higher duty of care to their workers pay for those who do not exercise that same care. In our community we will reward the poor performers and punish the good.

Mr Speaker, I for one am sure that this is neither a good or sound basis for developing public policy. Furthermore, Mr Speaker, to turn this basic and fundamental premise on its head is to undermine the significant work that many members of our community put into improving the quality of life of the working men and women by improving occupational health and safety workplace practices. We owe it to our community to do better, and to recognise and reward good and safe work practices over bad.

MR STEFANIAK (Minister for Education and Attorney-General) (11.42): I listened with interest to what Mr Stanhope was saying. I agree entirely with Mr Stanhope, because I have been saying it for about six years, that the majority of young people do not go on to university, and it is absolutely essential that we have a very strong vocational education and training system in this territory. That is something, I think, that this government is very proud of. I am certainly very proud of it as the education minister.

About 40 per cent of our kids do go to university. That's nice. That's fine. That is well above the national average of 30 per cent. It speaks volumes for our education system. But 60 per cent do not.

One thing that has particularly pleased me since we have been in government is that the number of trainees and apprentices has grown from around 2,000 or so in June 1995 to around about 6,000 or so, I think, at the end of last year. That is particularly pleasing because it means that a lot of young people, mainly, are in jobs which they would not be in otherwise. Those training schemes enable apprentices and trainees to reach their potential and be a very marketable quantity in the work force.

Turning to capital works, I think we have put on the table the biggest capital works budget since self-government, and that obviously relates to the building industry. Quite clearly this government is trying to ensure that we have very significant capital works which will assist the building and construction industry in this town because we see it as vital. We do not like seeing downturns when people might not find much work, only part-time work, and maybe some people get laid off. I think it is very important that we sustain activity.

I partly disagree with some of the stuff Mr Stanhope said, although I think he is quite right about the majority of young people not going on to university. I hope everyone in this place supports vocational education and training. I hope everyone in this place supports schemes such as the CITEA scheme and the MBA scheme.

There is a lot, however, in what Mr Kaine has said and in what my other colleagues have said, and I hope members were listening very carefully. I really wonder whether what Mr Osborne is proposing here is the best way of doing it. I think even Mr Stanhope indicated that there were some dilemmas with it and some things they would prefer not to do.

It is also clear, Mr Speaker, from a letter just tabled by the Chief Minister that the group training company concerned in this matter has reached a commercial arrangement for the next 12 months. It has entered into arrangements whereby premiums will be based on an understanding which permits that company to kick goals within the period of the contract. I am also given to understand from the letter tabled by the Chief Minister that the scales slide both ways, either up if performance is bad, or down if performance is good.

This motion seeks to cap the premium obligation in the middle of the range at 15 per cent. That is what I understand it seeks to do. If a training group could be motivated enough as a result of the bargain reached and the goal set, there is every opportunity for it to achieve a premium rate of less than 15 per cent. My understanding in relation to CITEA is that they have had premiums less than that. I was talking not that long ago to one of their directors who indicated that there had been a premium rate of 12.4 per cent. This motion might lead to uncertainty as to the agreement that they have now reached. Indeed, they might well be held to having to pay 15 per cent when they could have achieved a lower outcome.

I wonder whether this move to cap premium rates will really do anything to assist the group training companies to employ one more person. There may well be the converse. Perhaps it could cost jobs rather than make new ones.

Obviously, in this industry there are real risks of injury simply because of the nature of the industry. Anyone who has worked on a construction site would know that. It is a lot harder working on a construction site. The risks of injury are far greater than, say, if you work in an office where the most you can do probably is to stick yourself with a pen or something like that. It is in the nature of the industry.

I think it is all the more important for the industry to look to protecting its vulnerable workers from injuries and accidents. I have been told, I think, that both CITEA and the MBA have taken significant strides in that regard recently, and that should surely mean that the premiums set may well come down. So I think we need to consider the nature of the industry, and the companies themselves obviously need to look at ways in which they can minimise the risk of injury. We probably will never eliminate it; it's that sort of industry, but minimising the risk is very important.

Mr Smyth, apart from giving me a few notes, also gave me a letter from a Mr Dallas Booth, the General Manager, Statutory Classes, Insurance Council of Australia, which I will table. Whilst the letter sets out clearly the difficulties with the current proposal, and I understand it has been circulated by the Insurance Council to members, I will quote the following paragraphs from it:

> A cap on workers' compensation premiums for poorly performing employers treats the symptom but not the cause. Imposing a cap of this nature has two important effects.
>
> Firstly, any premium cap operates to unfairly penalise other employers. This occurs because the costs have to be met by other employers in the ACT, resulting in significant cross subsidies being introduced into the scheme. Other employers are penalised even though they may be taking all appropriate actions to manage the safety of their workers.
>
> More importantly, a premium cap removes an important incentive for the employer to improve work safety for its employees. As mentioned above, premium setting reflects the level of risk and the cost of claims, and therefore operates as a direct incentive for an employer to manage workplace safety, minimise risk and operate with appropriate health and safety strategies.
>
> Risk prevention and safe work practices should be the focus to ensure long term premium reduction. The capping of the premium will reward the poor work safety of one employer and send the wrong signal about the importance of workplace safety to all employers in the ACT.

I table that letter which was sent to Mr Smyth as he asked me to do so. I present the following paper:

> Workers' compensation premium for the construction industry training body—Facsimile copy of letter from General Manager, Statutory Classes, Insurance Council of Australia to Mr B Smyth, Minister for Urban Services, dated 23 March 2001.

Mr Speaker, speaking briefly to Mr Berry's amendment: obviously I can see why he has done that. If the motion gets up that is a very sensible amendment to make in that it does put a sunset period on this. In the circumstances, if the motion is successful, I think most members of the Assembly would accept that amendment.

But I do wonder whether this is the right way to go. I am mindful of the fact that this company had a lower premium than 15 per cent, and my understanding is that it has significantly improved how it operates. One would think, given that it has concluded a 12 months agreement, that it might end up with a lower premium than the 15 per cent. I think the points raised by Mr Kaine in terms of setting a precedent such as this are very valid ones too, and worthy of everyone taking heed of.

MS TUCKER (11.50): The Greens will be supporting this motion, but we also have reservations about the nature of the response. It is a blunt instrument. However, we believe it is necessary at this time because the situation is untenable for the group training schemes, and we value the presence of such schemes in the community.

Basically, the changing shape of employment and industry has made trainees and apprentices particularly vulnerable on a number of fronts, and we need to act promptly to address the problem, both in the short term and more profoundly. I think most of us in the Assembly think this way, contrary to Mr Hird's assertion.

I certainly have not gone into this with barely a second thought. We have considered it very carefully. We wanted the original debate adjourned so we could consider it. We have spoken to the insurance industry about this as well as to other stakeholders, including, obviously, the group training scheme people, and what we should do is by no means clear or simple.

Mrs Burke spoke of the concern that putting a cap on a premium is a disincentive for improving workplace safety. That obviously is a concern to any kind of capping, but when you look at it more carefully you see that it is not as simple as that.

The reason why the premiums are going up is disputed. That is what I found so interesting when I looked at this matter and spoke to all the different stakeholders. The insurance companies on one hand will claim that there are increased payouts, but we do not see any evidence of that. The evidence has not been compiled in a way that can make me clearly see where the increase in incidents or claims is occurring. The insurance companies were not able to give us that. They say themselves that there is a huge issue about under-declaring by employers in terms of the number of employees that they have. Clearly, the under-declaring is an issue for premiums. This has to be unpacked.

We then have the other stakeholders, the group training schemes and others, saying that premiums are decided by insurance companies based on criteria that do not necessarily have to do with any real analysis of the claims. It is to do with other payouts they have had to make in other areas. For example, one person suggested to us that it was related to the Sydney storms and payouts there. I do not know whether that is correct or not.

What became very clear to us over the last couple of weeks when we have been looking at this is that nobody knows. I do not mean to misrepresent what Mr Humphries said, but I think at one point he said that he did not have the evidence to know about some of these issues. Well, I am in the same situation, and everybody in this place must be too because the evidence is not there. It is not as simple as saying that workplace incidents have increased. That is not what the industry that is working with these apprentices is telling us. So we do not have that information to make a decision.

Mr Kaine's proposal is that this go to the pricing regulator. I am interested in that. I do not know whether it is within his jurisdiction to do that sort of investigation. I think the problem for the pricing regulator would be the same problem we have experienced here, which is that we do not have data being compiled or evidence of the real situation in terms of under-declaring by employers versus workplace incidents and so on. Clearly, that is what you have to have.

The other concern, of course, about how well we are reducing accidents in workplaces has to be linked to how well we monitor and regulate the compliance of the industry. I have heard consistently over the last number of years that WorkCover is under-resourced, so I am hoping we will hear Mrs Burke speak about that at budget time and that we will see a commitment from this government to resource WorkCover in the way it needs to be resourced. It's a joke. If you talk to anybody in the industry now who is working in the area, as a builder, as a person managing construction sites, unionists or other people in all sides of the industry, the one consistent message I get is that WorkCover is under-resourced. They are not able to do the work.

I came across a site just by accident in the last month. It was closed, I understand, as an unsafe workplace. I was there and attention was brought to that situation. It was a shocking situation in many respects. It was a very dangerous situation, not only for the workers but for the public as well.

We also have the question of how the insurance companies are ensuring compliance. How well are they doing that? The other thing that I am hearing consistently is that they do not do that very well either, so this is not just a simple question of the premium reflecting the problem. If you are really serious, and I believe everyone in this place is committed to not seeing workplace accidents, then you have to look at all these aspects of how you reduce the number of accidents that are occurring. Find out how many are occurring to start off with because, from the claims of people, it does not appear as though these premiums do actually reflect the reality of workplace incidents and claims.

The private sector's workers compensation in the ACT is run by insurance companies competing in a fairly small market, and they aim to recover their costs and to cover their exposure and to make their profits from the companies for whom they hold policies. The rates used to be set on an industry base but are now calculated enterprise by enterprise, so the risk is not shared these days as much as pointed. One could argue, and some probably do argue, that capital and the market automatically sort out a fair price, but what is fair to some will be unfair to others. As there are a lot of shareholders to keep happy, no insurance company will carry the cost of injury and rehabilitation any more than it has to, and that's the bottom line in the private insurance market. As workers compensation is mandatory, I think insurance companies are said to be able to shift costs onto workers comp in order to make up past losses, and that is where we have had the allegations about the Sydney storms.

What we have ended up with here today anyway is that the group training companies are at risk. Now, we did try to work with the government on this. We were more interested in seeing some kind of subsidy as a response to this particular crisis. I must say that Mr Humphries' presentation was not very inspiring of confidence because basically he seemed to be saying we should not do this, but he has not got a better idea. So what is he saying? Do we just let these training companies go? Obviously people in this place do not want to see that happen.

I am disappointed that I could not work with government to come up with an alternative way of dealing with this because, as I have said, we do have some concerns about this motion, although it is going to be better than nothing, which is what the government is doing. I note that the government is prepared to indulge in corporate welfare when it suits it to a degree that many of us in this place and the community find quite disturbing. We are not talking about the millions and millions of dollars that we see the government providing to subsidise car races. We are not talking about those sorts of amounts. We are talking about much smaller amounts and for only two years, while, hopefully, we start getting some real interest in collecting the information that we need to collect in order to understand what needs to happen to improve this situation.

I would suggest, just from the research that we have done over the last couple of weeks, that that is about lifting the game of the government through WorkCover, and also the insurance companies themselves through how they check and monitor compliance, as well as trying to educate the broader community and make sure that there is this

understanding of the importance of this matter. *(Extension of time granted.)* This obviously is a problem, and the monitoring and regulatory functions have to be seen as very significant. I think I have covered most of the points that we need to make here.

I do support Mr Berry's sunset clause. As I said, I do not think it is a particularly good situation at the moment and we would like to see a real attempt to look at the causes of the situation that we have got to. I commend Mr Osborne for coming up with this motion because at least we are now able to do something to deal with the immediate problems. I hope that we see the government now actually take action. It might have two years. It might not be here in two years. Hopefully it won't be. The government of the day, whoever it is after October, will also have a responsibility to pick this up because of the sunset clause.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.01): Mr Speaker, I will speak to the amendment. I just want to make a couple of comments. I said before that the amendment was quite important in limiting the effect of this for a couple of years. Mr Kaine, in his remarks, referred to the absurdity, for example, of regulating, and he gave as an example the price of milk.

It is instructive to go back and look at what has happened in respect of other forms of regulation. We did regulate the price of milk in the ACT until last year, but there are two differences about that. One is that it was regulated not by a political decision at a particular price but by a body at arms-length from the government negotiating with stakeholders to reach an acceptable price. The second thing worth noting is that when the regulation of milk ended the price of milk fell and it has remained lower ever since, which is, I think, an interesting observation on the danger of regulation of any kind.

As far as the regulation of petrol is concerned, which also was mentioned by Mr Kaine, I note that the opposition has indicated its favour for regulating the price of petrol, using a power which is actually available in legislation, so I suppose its support for this motion is consistent, but I suspect that the risks and dangers involved in that are even greater than they are in this particular field.

Mr Stanhope asks, "What is the government going to do about the problem of rising premiums for workers compensation?" I asked in return what the opposition was going to do about it. I think that is a fair question given the fact that there is an election in just over six months time and parties are expected to put their position on the table in respect of major problems faced in the territory. Mr Stanhope's response was: "Well, this motion is our response, or at least partly our response." I say first of all that this is not your motion, of course; it's Mr Osborne's motion. Secondly, this motion only covers a very tiny area of the workers compensation problem. It is a problem affecting a host of companies across the ACT. Are you proposing to do this with respect to other companies as well?

Mr Stanhope: I take a point of order, Mr Speaker. This is a classic Gary, the throwing up—

MR SPEAKER: Which standing order are you referring to, please?

Mr Stanhope: It is a point of order on the fact that the Chief Minister was quite disorderly in his interjections to me during my speech, Mr Speaker, a point which you did not pick up. I chose not to return his disorderly behaviour by confining myself to the nature of this debate. I am more than happy at an appropriate time and in an orderly fashion to indicate what the Labor Party would do in relation to workers compensation. Today we are debating a specific motion moved by Mr Osborne. This is just nonsense.

MR SPEAKER: In other words, there is no point of order. Resume your seat. Proceed, Chief Minister.

MR HUMPHRIES: Mr Speaker, we need to remember that this motion only covers a tiny area of workers compensation in the ACT, so it begs the question: if this is the solution, are we going to extend this to other areas of workers compensation?

Mr Berry: No.

MR HUMPHRIES: "No," says Mr Berry. But Mr Stanhope said before that this was the solution the Labor Party was proposing.

Mr Stanhope: I take a point of order, Mr Speaker. That is simply not true. If the Chief Minister actually wants to mislead the Assembly—

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

Mr Stanhope: There is a point of order.

MR SPEAKER: If you wish to have—

Mr Stanhope: Well, I will take it up later as a personal explanation. The Chief Minister is not telling the truth.

MR SPEAKER: If you wish to make a personal explanation then you can do so.

Mr Stanhope: I will.

MR SPEAKER: In the meantime sit down. Thank you.

Mr Stanhope: It would be good if he actually told the truth.

MR SPEAKER: Withdraw that. That is an implication. I ask you to withdraw it.

Mr Stanhope: I will withdraw that and I will explain the situation—

MR SPEAKER: Thank you. You will have the opportunity to explain yourself later.

Mr Berry: Mr Speaker, I move:

> That the question be now put.

We have had enough of this.

MR SPEAKER: I am sorry, the member is speaking. The Chief Minister is in the middle of—

Mr Berry: If he wants to add another political element to the debate, it is not helpful in the scheme of things. We might as well put the question and move on.

MR SPEAKER: I would not suggest you do that. Mr Rugendyke wishes to speak as well.

Mr Stefaniak: Mr Rugendyke has not spoken. You might need his vote.

Mr Berry: What was that?

MR SPEAKER: I said Mr Rugendyke is going to speak as well.

Mr Berry: Is he?

MR SPEAKER: Yes, he is.

Mr Berry: Well, this is the second crack—

MR HUMPHRIES: I am entitled to speak, Mr Berry.

Mr Wood: No, you are not. You have to get leave to speak again.

MR SPEAKER: Order!

Mr Wood: A very bad practice, I might say.

MR SPEAKER: He is speaking to the amendment, Mr Wood.

MR HUMPHRIES: I do not need leave, Mr Wood.

Mr Wood: All right. Okay. Sorry.

MR HUMPHRIES: Mr Speaker, to mollify Mr Stanhope I will say—

Mr Stanhope: Tell the truth.

MR HUMPHRIES: Mr Speaker, I ask that he withdraw that. That is not in accordance with standing orders.

MR SPEAKER: Yes, it is not.

Mr Stanhope: I will withdraw that, but it would be nice if the Chief Minister would withdraw the statement that I said this was the solution—something I never said.

MR SPEAKER: Thank you. Just withdraw it and sit down. You will have a chance to correct it later. Thank you.

MR HUMPHRIES: All right, okay; I will do that, Mr Speaker. You implied that and I said, "What's the solution," and you said, "Well, here, this is at least part of a solution." Okay, if it is part of the solution, what is the rest of it? Aren't we entitled to know what you are proposing? You are getting up in this place and saying, "The government has no solution to this problem." The government has conceded that it does not have a solution to this problem. If you are going to attack us on that basis, it surely implies that you have got an answer. Now, what is the answer? That is my question.

Mr Berry: We have. We are going to vote for this motion.

Mr Stanhope: We are debating and voting on this motion.

MR HUMPHRIES: No, you are not just doing that; you are also—

Mr Stanhope: We will be telling you later all the other things you are doing wrong.

MR SPEAKER: Order! Stop interjecting. Just be quiet. Proceed, Chief Minister.

MR HUMPHRIES: Mr Speaker, I make the point to other members of this place that if you rise in this place to say the government has not got a solution, it is incumbent on you at least to suggest or hint at what your own solution to the problem is, and that is what I would say needs to happen.

It is possible, Mr Speaker, that there are some problems facing our community for which there are no ready answers. I am not so dogmatic as to assume that there is always an answer to every problem; you just have to find it. That may or may not be the case. I doubt that there are some solutions to some problems. I think, therefore, that we have to be very cautious about saying, "Well, this is the best thing that anyone has put up; therefore, it should be what we do." That is the risk in this approach.

MR RUGENDYKE (12.08): Mr Speaker, this debate is rather broad, but essentially it has come about because a training organisation that looks after, I think, about 300 apprentices approached Mr Osborne to solve an immediate problem. The immediate problem is that there is an insurance premium of about $450,000 for 2001, but for last year, when it was $415,000, total paid claims amounted to $19,255. That is by my reading of this document that I thank Mr Stanhope for tabling.

A decision on whether to support this motion or not depends on the level of sympathy you have for these apprentices who might find themselves unable to continue their apprenticeships balanced against the level of sympathy that you might have for the insurance companies. I must say that so far the apprentices are winning. You just have to look at how insurance companies treat people anyway. Just look back a few years ago. I think Ms Tucker referred to the floods in Wollongong where, surprise, surprise, the insurance companies did not insure home owners because apparently there was a flood as a result of a storm.

But what happened recently in the floods around Gunnedah or somewhere was that the insurance companies decided not to insure these people because it was not as a result of a storm. Members might correct me if I am slightly wrong there, but that is my

recollection of what happened. So you have to balance the level of sympathy you have for apprentices against the level of sympathy you have for insurance companies.

I note several things in the letter tabled by Mr Stanhope: one is the number of apprentices that this would affect. Another is the increases in insurance premiums from 1995 to the present—9 per cent, 12 per cent, 20 per cent, and now it is 25 per cent. When you look at the table on the back, it seems that the insurance companies are doing pretty well out of this. There have been very few occasions when the insurance companies seem to have gone a little bit backwards. It looks like $124 in 1999. Yes, it looks like they are doing pretty well. I note that this has come to our notice this morning, so the analysis might not be correct, but look at the retained premiums. That must mean profit, surely? Gee whiz! They are not doing too bad. I do not think this section of the insurance policies is what sent HIH broke. It looks to me like this aspect of insurance is doing pretty well.

At the end of the day, Mr Speaker, it's about jobs. It is about our apprentices being able to continue their employment, and to be trained properly and appropriately. I support the motion, and I support the amendment for a sunset clause because this will come back. I also note the wise words of Mr Kaine, but, on balance, I support Mr Osborne's motion.

MR OSBORNE (12.13): I thank members for their support. This obviously has been a difficult issue for me and for other members. I do not think I have once suggested that this is the solution to the workers compensation premium issue, but I think we had to do something, and we had to do something quickly because we have already seen group training schemes across the country go under because of workers compensation. That is why I came up with this suggestion. There is a section of the act which allows the minister to set premiums. We obviously moved this motion because of that. I thank Mr Berry and Ms Tucker in particular for the work that we have done with them via our officers trying to gather the support for this legislation.

I have to say, Mr Speaker, that the economic rationalist approach of the government and Mr Kaine, whereby you just let business do whatever they like, is not something that I particularly support. I think that we as a parliament, and governments in particular, have a responsibility to act sometimes, and that is what we are doing. This obviously is something that we have given a lot of thought, but at the end of the day there are hundreds of apprentices' jobs on the line, and I was not prepared to sit back and do nothing and see them out on the street.

Mr Speaker, on the issue of workers compensation premiums in particular, I have to say that I am now giving serious thought to placing caps on different industries across the board, but that obviously is something that will take some time. I do intend to speak to Mr Baxter, the Pricing Commissioner, to see whether or not he could be involved in the process over the next couple of years, as per the suggestion of Mr Kaine.

Mr Kaine: A very wise suggestion. Do it before, rather than after.

MR OSBORNE: That was a very wise suggestion from the elder statesman over there, and it is one that I think we should pursue. I do not know whether or not Mr Baxter would be able to take this on board. I have had discussions with Mr Baxter from time to time about what role he would play. As no particular company has a monopoly, I do not

know whether or not he could become involved with that. Perhaps there is scope for his involvement.

I thank members for their support. Yes, this is a blunt instrument-type approach, but I think it is a blunt instrument that we, as a parliament, should not be afraid to use when the time is right. I am pleased that we have got the support, and I am pleased now that 350 apprentices will be able to keep their jobs.

Amendment agreed to.

Motion, as amended, agreed to.

Totalcare—provision of services

MR STANHOPE (Leader of the Opposition) (12.17): I move:

> That this Assembly calls on the Government to demonstrate its commitment to Totalcare and its employees and to the provision of quality services to the residents of the ACT.

Mr Speaker, I will give a brief history of Totalcare in speaking to this motion. Totalcare was corporatised on 1 January 1992. It had previously been part of the ACT Board of Health. Its core business was in linen hire, waste management and surgical instrumentation sterilisation. But even in its formative years it was in trouble. The closure of the Royal Canberra Hospital resulted in reduced demand and the company returned a loss of $90,000 in its first six months of operation. It is interesting to note from its annual report that the company reported that industrial relations were harmonious. In its second year Totalcare made a profit of $249,000 and returned a dividend of $38,000 to government. Industrial relations remained harmonious.

Three former non-core services were added to the company's core services—a transport division operating buses to transport the profoundly disabled, and frail and aged; an engineering service providing maintenance services to health service buildings; and an automotive service servicing the ACT Health fleet. The company reported, as in the previous two years, harmonious industrial relations.

In 1993-94 Totalcare made a profit of $338,000 and returned a dividend of $84,000 to government. The company extended the scope of operations by purchasing Canberra Oil Disposals. In 1994-95 Totalcare made a profit of $395,000 and returned a dividend of $120,000 to government. In 1995-96 it made a profit of $484,000 and returned a dividend of $242,000. In each of these years Totalcare managed successively to double the dividend that was returning to government. It is interesting, though, that in that 1995-96 year the board reported that after the date of that balance the government had announced the transfer to the company of a number of areas of DUS.

In the 1996-97 annual report of the company it was reported that business units transferred from DUS included capital works project management, civil engineering maintenance, surveying services, property management, building maintenance and fleet management. Totalcare's bus transport service was transferred to ACTION.

The addition of the DUS operations saw Totalcare's work force expand from 250 to 800. The company made a profit of $16.3 million after tax and returned a dividend of $194,000 to the government. Significantly, the transfer of functions from Urban Services saw Totalcare act as project director for the Canberra Hospital implosion.

The linen division successfully tendered for the provision of a full linen hire service to nine private hospitals in the Sydney metropolitan area, creating 40 new jobs. Significantly, in line with what was happening in the Commonwealth public service, the ACT government took a decision to untie Totalcare's government clients after the 1997-98 financial year. In 1997-98 the company made a profit of $8.275 million, but reported that no dividend was returned to the government. However, the following year's report recorded a dividend of $195,000.

In 1998-99 the company made a loss of $2 million and returned no dividend to the government. The work force was down to 660 and $2.9 million was spent on voluntary redundancies. The chairman remarked in the annual report that "today's increased regulatory requirements, down-sizing of government departments and the outsourcing of government contracts, together with the greater competitive nature of the business environment will continue to challenge the company". In 1999-2000 the staff level fell to 546. The company made a loss that year of $318,000 and no dividend was returned to the government. During the year its joint venture quarry at Williamsdale became operational.

There are some significant features in that history gleaned from Totalcare's annual reports. In its formative years of over five years there was a doubling of the divided returned to government. When a range of DUS services were transferred to Totalcare, from that year on either no dividend was returned, or a lesser dividend than in its formative years.

I think the point can be made that Totalcare's problems, or the difficulties in relation to its profitability and its capacity to return a dividend to the government, started when it was forced to be a player in a fully commercial world. They started when the government took the decision to untie the company's government clients. They started and continued as a result of the company being a victim of the Liberal government's blatant ideological approach to outsourcing.

Totalcare was forced into the open market despite the fact that the company has to bear the non-commercial costs of government, and those costs are significant. For instance, in the private sector companies pay seven per cent as a superannuation guarantee levy. Because Totalcare's staff retain rights to public service entitlements, the company pays 15.2 per cent.

Like other government or semi-government agencies, Totalcare carries costs of meeting public disclosure and FOI obligations. Its obligation to report to the parliament through its shareholders, and occupational health and safety responsibilities, are also arguably higher costs for Totalcare than similar demands on its private sector competitors.

Corporatisation was designed as a means to make public sector service providers more efficient. It was designed to make them face up to the market realities of true costs. It was designed to make public sector service providers work smarter. It was not designed, in theory at least, to remove public sector service providers from the market. In reality it

allowed ideological administrations to place public sector agencies on a moving footpath—get on at corporatisation and fall off at privatisation. Of course, the Carnell/Humphries ideologues grabbed at it, just as their heroes Howard and, even before him, Margaret Thatcher did. It became a world trend, one that Australia took up a little behind the pace. It is notable that that trend is rapidly becoming discredited.

It is interesting that in California the government looks set to buy back the electricity transmission system it privatised less than five years ago. In New Zealand the Labour government is beginning to reverse the privatisation trend that that country set out on years ago. The Prime Minister of New Zealand is on record as saying that New Zealand's experiment in market fundamentalism has failed. The rush to privatise has thrown out of balance the economic and social priorities that governments have to address. This government, of course, says it is committed to paying more attention to social concerns, concerns that it quite clearly abandoned over the last five years, and naturally is found committed to again in this an election year, and even those claims are not the case with what it apparently wants to do with Totalcare.

Totalcare has a long history of providing quality services to the territory, and in an efficient manner that has returned profits and dividends; but the insistence on exposing the company to unfettered market forces when the company itself is constrained exposes it to the inevitable risk of failure. If Totalcare is to be a player in the market it has to be able to play on a level playing field. That was the mantra the corporatisers chanted when they sang their song of market efficiency.

The government cannot have it both ways. Totalcare prior to 1997 was making great headway in improving efficiency. It was paying its way. Since then, since clients were untied whilst Totalcare's own hands were tied, the wheels have started to fall off.

Some of the debate through questions and answers that we have heard in this place as a result of the decision that was taken to not grant to Totalcare the tender in relation to facilities and maintenance for ACT Housing has been interesting. We have had exposed in this place the extent to which Totalcare has achieved significant and creditable approval for its performance as the facilities manager or the manager of ACT Housing. There have been approval ratings of 99 per cent, and in some cases 100 per cent. There has been no concern with the standard of performance of Totalcare.

But we are aware that, despite the enormously good service that Totalcare has provided, over the last couple of years it has lost its outdoor maintenance contracts. It could not meet the requirements either to renew its hospital linen contracts, and now, as I have just said, it has lost a major contract to another government entity, namely, the ACT Housing contract—a contract that has been let to a Sydney company.

The purpose of this motion is to give the government a public opportunity to explain just what it is doing with Totalcare and exactly what its agenda is. What is the government's level of commitment to Totalcare? What commitment is the government prepared to make here today, as called upon by this motion, to detail its clear commitment to Totalcare and to Totalcare employees? That commitment needs to be made in light of promises made, I think, before the last election in relation to ACTEW.

We all remember, of course, the government's promise that the sale of ACTEW was not on its agenda. I think it is moot, having regard to this government's history in relation to its promises to public facilities such as ACTEW and its now blatantly breached promise in relation to ACTEW, namely, that it had no intention of selling ACTEW, that it do declare its commitment to Totalcare.

Having regard to the history of this government's actions and activities in relation to Totalcare, and its apparent lack of commitment to Totalcare and its continuing health and future, it would be appropriate that the government declare its position in relation to Totalcare. What is its level of commitment? Does it intend to provide a set of circumstances where Totalcare is dismembered bit by bit, so that we arrive at a situation where there really is nothing left but a very empty and hollow shell that it has no intention of maintaining?

The government also has a need today to express its commitment to the employees of Totalcare. The government needs to declare today whether or not it understands the insecurity that it has generated amongst Totalcare workers. I have received representations from people from Totalcare, and I am sure other members have. I hope the government has, and I hope the government is prepared to listen to the dreadful insecurity that has been generated as a result, in particular, of the failure of Totalcare to attract a significant ACT Housing contract, one which it has performed at the highest levels.

At every stage of its performance of the maintenance contract for ACT Housing, Totalcare and its management of that maintenance program has been accorded an approval recognition of 99 to 100 per cent. That was despite the efforts by the minister for housing to explain how it could be that Totalcare was not successful in that tendering process. He confused Totalcare's performance with his own performance, in effect, in terms of the Productivity Commission's view that there were significant gaps in clients' satisfaction with the performance of ACT Housing and client gaps of satisfaction in relation to the quality of ACT Housing itself, and the availability of housing and public trust housing administration in general.

It is interesting that the minister for health chose, quite deliberately, I think, to confuse the two levels of satisfaction with housing, namely, that of clients with ACT Housing and public trust housing in the ACT and the level of satisfaction of ACT Housing clients with Totalcare and Totalcare's performance of its obligations. It is an issue which is yet to be appropriately explained.

The one aspect which continues to be of grave concern is the number of people in Totalcare who are now facing redundancy. It is a significant number. Numbers between 70 and 100 are being mentioned as the number of Totalcare employees in the latest round who no longer will have a job once the housing maintenance contract is transferred to the new out-of-town tenderer. These are people who have given faithful service to the ACT as public sector employees. They have a right to know what their future is. Not just those now facing the chop as a result of the loss of this major tender but also those other ever dwindling number of employees of Totalcare must wonder whether or not there is any future at all in being employed by Totalcare.

The number has reduced in the last three years from 800 to fewer than 500 now. As a result of this latest round of redundancies following the loss of this major ACT government contract it is likely that the Totalcare work force will have halved in just over three years. The government owes it to those who are about to be offered redundancies, and all those who are still there, wondering whether or not there is any future or whether or not Totalcare will go the same way as ACTEW—that it is not on the agenda, but we know that after the election it will go.

MR SPEAKER: The member's time has expired.

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

Sitting suspended from 12.32 to 2.30 pm

Ministerial arrangements

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): Mr Speaker, in the absence of the Minister for Health, Housing and Community Services, I will be taking questions on his portfolio in today's question time.

Questions without notice

Integrated document management system

MR STANHOPE: My question is to the Minister for Urban Services. Will the minister tell the Assembly the value of the tender let late last year for an integrated document management system? Can he confirm that a related tender—for the financial assessment proposal to supply such a system—was won by the Alliance Consulting Group at a cost of $83,000? Was that contract let for a period of two months from 3 October last year?

MR SMYTH: I do not have details of the tenders and their value as let. I am happy to take the member's question on notice and answer it accordingly.

MR STANHOPE: I have a supplementary question, Mr Speaker. Given that the government has re-called tenders for the supply of an integrated document management system, can the minister tell the Assembly what has happened to the Alliance Consulting Group contract?

MR SMYTH: Again, I will take that on notice.

Members staff—log of claims

MRS BURKE: Can the Chief Minister advise the Assembly whether he has received a log of claims from the Media, Entertainment and Arts Alliance on behalf of members staff? If so, can he advise the Assembly of the details of the log of claims?

MR HUMPHRIES: Yes, I can provide details of the claim that is being made. I hesitate to read it out, because I know that there are many members staff in the chamber and I would hate to see their eyes light up in anticipation of what might be on offer. The claim refers to a minimum salary of $200,000 per year, rising to $500,000; a pay rise

every three months; first-class air travel for staff, their partners and dependants; a government-provided fully maintained vehicle; a maximum 30-hour week, with two-hour lunchbreaks—

Mr Wood: Put it in context.

MR HUMPHRIES: There is no context at all which justifies that, Mr Wood, I am sorry. I continue: triple-time penalties for work outside rostered hours—

Mr Stefaniak: Where do I sign?

MR HUMPHRIES: I would if we could, Mr Stefaniak.

It continues: 10 weeks annual recreation leave; two years fully paid parental leave on the birth or adoption of a child; a fully paid 30-minute rest break every hour; free child care and health insurance; and a superannuation scheme with the employer contributing 50 per cent of an employee's annual salary. That is pretty extraordinary stuff, I think we would all agree. With demands like that apparently de rigueur in the sector, you can see why there is a demand for industrial relations reform in this country.

My view of this proposal is pretty clear. I wonder what the opposition's view of it is, given the connection there between the opposition and the Media, Entertainment and Arts Alliance.

Mr Stanhope: What connection is that?

MR HUMPHRIES: Your staff member, Mr Stanhope.

Mr Stanhope: Oh, so this is to do with my staff. It is an attack on my staff, is it?

MR HUMPHRIES: Yes.

Mr Stanhope: Oh, I see.

MR SPEAKER: Order! I call Mr Quinlan.

Mr Stefaniak: A negative device for an aggressive attack on my staff.

MR SPEAKER: Order! Mr Quinlan has the call.

Mr Stanhope: What a joke!

MR SPEAKER: Be quiet, Mr Stanhope. It is being discourteous, anyway; your colleague is about to ask a question.

Mr Stanhope: The depths to which you descend.

MR SPEAKER: That was not directed at me, so I shall ignore it.

Bruce Stadium

MR QUINLAN: My question is directed to the Chief Minister. I refer to the Bruce special purpose financial statements as at 30 June 2000 which, by the way, were demanded by the Auditor-General in order to clarify the mishmash of reporting that otherwise would have confused the picture on the redevelopment. The report includes a substantial write-off of the capital value of the redevelopment as irrecoverable—$37 million in two years.

You are now publicly describing Bruce Stadium as a community facility, so I have to ask: why is it seen as necessary to write down the value of this asset, other than to hide the true cost of provision of this community facility? After all, so many other community facilities that depend and will continue to depend on the public purse are still recorded on the territory's books at the substantial and probably original asset value. The Canberra Hospital is at one end of the spectrum and the Cultural Facilities Corporation is at the other.

Is the criterion for writing down the value of community facilities based on the degree of embarrassment associated with the particular facility? Why is there this special accounting treatment?

MR HUMPHRIES: First of all, let me say, I ignore the emotional overlay which was included in the question. Secondly, I think that it is appropriate to record that some of the facilities that Mr Quinlan referred to have a different accounting base and are treated differently by the ACT. Did you mention the Museum and Gallery?

Mr Quinlan: The Cultural Facilities Corporation.

MR HUMPHRIES: The Cultural Facilities Corporation. I think that there is an entirely different base on which it is accounted for within the government's accounts and that is a matter that ought to be taken into account. The advice I received was that the matter ought to be recorded in that way. I accepted the advice and I think that it is appropriate to make sure that we are transparent about such things. There is nothing secretive about the way in which it is being put on the table in this case. Mr Quinlan has not had to dig through secret documents or make FOI applications to obtain the information. It is there on the public record, and that is the record on which we now rely to be able to proceed with the amendments that have been put on the table by the government.

MR QUINLAN: I have a supplementary question. Can the Chief Minister confirm that the approximate value to the people of Canberra of Bruce Stadium on its books is, at best, zero and probably of negative future value?

MR HUMPHRIES: There has been considerable debate about how to value Bruce Stadium.

Mr Quinlan: Zero seems to be the answer.

MR HUMPHRIES: I would take issue with that statement very strongly indeed. I have been out to Bruce Stadium and I have been able to sit there and enjoy—

Mr Quinlan: I take a point of order, Mr Speaker. I did ask about the monetary value.

MR HUMPHRIES: I heard the question, Mr Quinlan, and I say to you that I do not think that the monetary value of the stadium could under any reasonable guise, at least a guise applied by people other than accountants and valuers, possibly be valued at zero. Look at that structure and tell me how it could be valued at zero, Mr Quinlan. It might make sense to an accountant's mind, but it does not make sense to anybody else. I do not think that the stadium is appropriately valued in that way. It is obviously a valuable community asset in a lay sense and it seems to me to be a valuable asset in an economic sense as well.

I have also made the point that it should be viewed as a community asset, and the basis on which its funding is structured in the future should be that it is, in fact, a community facility. We should not expect it to turn a profit, as has been the expectation in the past. It should, in fact, be viewed as a facility which is designed to serve broader community needs.

Draft budget process

MR KAINE: My question is to the Chief Minister and Treasurer. I refer to the article in yesterday's paper by Liz Armitage headed "Another rebuff for Budget process". I am sure that the Chief Minister has seen the article, but I draw his attention particularly to the concluding couple of paragraphs. The ACT Council of Social Service is quoted as having said in respect of the draft budget process that its ability to comment on draft initiatives was severely compromised by the limited information provided by government and that changes to the process had not been well communicated, resulting in confusion and a lower level of community engagement.

I specifically want to draw the minister's attention to the part where the council was quoted as saying that it was impossible to determine if measures were new initiatives, existing initiatives with a new name, or Commonwealth programs being implemented in the ACT. Chief Minister, I guess this is an opportunity for you now to clarify the situation and tell us and ACTCOSS which of your draft budget initiatives were, in fact, genuinely new initiatives, which are being recycled as supposedly new and which are measures already being introduced by the Commonwealth.

MR HUMPHRIES: I thank Mr Kaine for that question. I think that it is important to put on the record, first of all, that the Council of Social Service has welcomed the concept of a draft budget and has told us privately and I think has told committees publicly that it believes that the process of opening up government books to allow this process to be on the table before the final budget is brought down is a good process. I know that the committees which have reported on this matter have tended to take out the criticisms of the process, put them in the reports and imply that that is the totality of the view by bodies such as ACTCOSS of the draft budget process. If that is so, it certainly is at odds with the view that they have expressed to me very forcefully and, in fact, have expressed in public as well about the need for there to be a continuing draft budget process. Let me put that point on the record first of all.

I am sorry that ACTCOSS found the process severely compromised. They have not discussed the matter with me, but I would be very happy to indicate to them that the issue they raised in respect of that matter, as I recall the report of one of the committees, is that they were not sure how much offsets were taking place within departments to fund new programs. They seemed to be unsure about what was being cut, changed or done away with in order to provide for the new initiatives which appear in the draft budget. If they had asked me, I would have told them that, in fact, all of the initiatives announced and presented to the committees were new initiatives, they were things that were done on top of the existing base of activities the government undertakes, unless otherwise indicated. That was fairly clear from the documents that were published. So we did not have to stop doing a particular activity in order to fund a new activity that was referred to in the budget; they were all, in that sense, new activities.

Members will recall that I supplied information to the Assembly in two lots, however, and indicated specifically that the second range of issues which we were putting before the committees were issues which could be described as not being new or as an extension of existing proposals. I am struggling to think of an example of one of those at the moment, Mr Speaker. I think one of them was an extension of a program in schools for funding IT hardware. That was not characterised in the budget initiatives as a new initiative because, in fact, it had been done before and it was separately treated in order to make that clear to the committees. So, with that distinction in mind, the things that were presented in the first lot of documents that portrayed new government initiatives are all new government initiatives; they are not recycled and they are not in substitution for something else that was being done before, unless expressly indicated. I think that anything that was funded from Commonwealth money appeared in the second round of documents, not the first. So the answer to the questions is that they were all genuinely new initiatives.

MR KAINE: I ask a supplementary question. Since clearly, according to ACTCOSS, the draft budget was like the curate's egg—well done in parts—I repeat my question to the Chief Minister. Since he has failed to clarify the issue now, will he do so in writing before the Assembly debates the draft budget in the near future?

MR HUMPHRIES: First of all, I think I have clarified the matter quite comprehensively. I have given you a fairly categorical answer to that question. I know that you had written down a supplementary question and you did not want to change it, but the fact is that I have given a pretty comprehensive answer to that question. I do not know what I can add to what I have already said.

If members are prepared to acknowledge that the draft budget is well done in parts, that would be a major concession. What I am hearing from most people is that they do not like any of it, and they think the whole thing is unacceptable. I agree with the assessment that it is well done. I would not say in all parts, but I think it is reasonably well done. I do not pretend for one minute that we will not have to continue to improve this process. We have to come forward with improvements in this exercise. It is not a fait accompli. It is not an end but rather a beginning.

As I have said before in this place, I have no doubt that in coming decades governments will not get away with the very elitist, very secretive approach which says that you prepare your budget behind closed doors, only the cabinet gets the privilege of seeing

what is going on and nobody but nobody knows anything about it until budget day. That is a most unacceptable view, and it is one I believe will ultimately die in the Australian political context.

Urban development document

MR CORBELL: My question is to the Minister for Urban Services. Minister, the *ACT Industrial Land Policy Review 2000—Discussion paper*, available on PALM's web site, on pages 2 and 7 refers to many reports. One of these reports is the *Urban Development Program 2000-2010*. Earlier this year, in February, a PALM staff member refused a verbal request from one of my constituents for a copy of that document, stating, "It is not a public document." Why is the *Urban Development Program 2000-2010*, a document highlighted in the public discussion paper, not available for public scrutiny?

MR SMYTH: I thank the member for his question. I am not aware why the document would not be a public document, particularly if it is listed on the PALM web site. Neither am I aware of the circumstances in which Mr Corbell's constituent asked the question of the PALM officer. All I can say is that when documents are posted on the web we need to look at what their status is and make sure that if they should be available to the public they are available. I am happy to get the details of Mr Corbell's constituent and look into the matter for him.

MR CORBELL: Minister, will you table a copy of the *Urban Development Program 2000-2010* for the information of members of the Assembly?

MR SMYTH: Again, I am not aware of the status of the document at this time. I will check on the status of the document. If it is appropriate to table it, of course it will be tabled. That is why many documents such as this are posted to the web—for the info of the public. They should be made available if we are free to do so. I will check for the member and certainly table the document if appropriate.

Australian International Hotel School

MR OSBORNE: My question to the Chief Minister is about the Australian International Hotel School. I think, in part, I know the answer—I have just found it—but I will still ask the question. Reading through the Auditor-General's report No 1 of 2001, I looked at the significant findings he made in relation to the hotel school. I will read them:

> The AIHS incurred a loss of $2.3m in 1999-2000. Accumulated losses at 30 June 2000 were $19.0;

That obviously does not take into account the $30 million the government wrote off. The Auditor-General also said:

> The School incurred an unrealised foreign exchange loss of $90,708 on the Cornell establishment fee during the year;
>
> The AIHS is not likely to be profitable in the short or medium term. There is little expectancy of longer term profitability; and
>
> Borrowings from the Central Financing Unit were 6.3m at 30 June 2000.

Mr Kaine: Read the bit about Bruce Stadium too while you are at it.

MR OSBORNE: Mr Kaine interjects about Bruce Stadium. When you look at this project, it is probably a lot worse than Bruce Stadium, because we still have a stadium.

MR SPEAKER: Mr Osborne, this is not a debate; this is question time. Do you have a question to ask of somebody?

MR OSBORNE: My question, Chief Minister, was going to be: what are you going to do about it? But I understand from reading this report that you have undertaken a review. How much longer does the ACT taxpayer have to keep funding this black hole, and can you tell us when this review will be completed?

MR HUMPHRIES: To answer the second part of the question first, the review, I understand, is due to be completed later in the course of this calendar year. I do not know more precisely, but I will get back to you with a month, if we have that available.

As to what we are going to do about the school and how much longer it will be a burden on the taxpayer, we have had lots of debates in this place about the Australian International Hotel School, and we have all expressed our views about the way in which it was set up and the way in which it has been handled in the period since it was established and the basis for it to operate on and so on. For my part, it is my intention to try to end that kind of fruitless debate about the past of the school and concentrate exclusively on its future.

I believe we have an obligation to the students enrolled at that school to ensure that it continues to be available to them to see them complete the degrees they have begun there and that we continue to attempt to develop its potential as a viable education facility in the ACT. Appropriately, we should try to view the hotel school not as a money-making venture.

Mr Kaine: It is a community facility like Bruce.

MR HUMPHRIES: It is neither a community facility nor a money-making venture. We would certainly expect that we would subsidise the operation of schools in the ACT. We do not operate many facilities at the tertiary level, so we do not have the problem in respect of that. Generally speaking, at the tertiary level the question is becoming slightly different: should the government subsidise those facilities? I argue that in the ideal world it should not. However, it is not reasonable—at least in the short term, as the Auditor acknowledges—to expect that there is any capacity to make a profit from the hotel school. If it is not making a loss, I do not mind if it is also not making a profit, because there are obligations the ACT has entered into in respect of the school which it cannot avoid.

The question was: how long will it take to get the school on a financially viable footing where it can sustain itself without government support. There are a number of obstacles in that path. Mr Osborne mentioned the $100,000 loss on foreign exchange. That is unfortunately something a lot of other people in the community are suffering with the fall of the dollar at the moment. I cannot do much about that.

The question of bad publicity for the school is also an issue which needs to be addressed. The other day I was discussing with the school how they are going in attracting students from overseas. I think it was the dean of the school who mentioned that he been overseas touting for business and had discovered that, when he went to some education institutions to see about a cross-flow of students from those institutions, people were pulling out of their folders clippings from the *Canberra Times* with criticisms of the school, some of them quite unfair criticisms. So it is not easy to provide for a rehabilitation of the school's position when we have that kind of press.

It is time for us to bury the past of the school and focus on its future. I will be trying to be as positive as I can about the school in the future, but we all need to consider that if we want to see that stronger future for the school we are going to have to take an approach here which is supportive of the work it is trying to do.

MR OSBORNE: I am happy to talk about the future. I will quote from the Auditor-General about the future:

> With the current deficiency of net assets and continuing losses into the foreseeable future the AIHS can only continue to survive with ACT Government support.

That is what he thinks about the future. I hope he is wrong. My supplementary question, which I assume you will take on notice, is this: could you provide me with the ratio of overseas students to local students?

MR SPEAKER: No preamble, Mr Osborne. Please ask the supplementary question.

MR OSBORNE: I did. You interrupted me.

MR HUMPHRIES: The ratio of overseas students to local students is very high. It is at least 75 to 80 per cent overseas students, but I will get an exact figure for Mr Osborne and let him know about that.

You pointed out that there was a not very good prognosis from the Auditor-General. I do not share that pessimism. I think it is possible to turn around the school's fortunes, and that is the government's job.

Crime statistics

MR HARGREAVES: My question is to the Minister for Police and Emergency Services. Minister, according to the *Administration of Justice—Statistical Profile* that was tabled yesterday, so let us not hear anything about figures being out of date, the ACT clear-up rate is less than desirable. For the December quarter 689 vehicle thefts were reported, about seven a day, but only 69 reports were cleared up. That is only 10 per cent. There were 1,356 home burglaries and only 68 cleared up—5 per cent. There were 205 shop burglaries and only one cleared up—0.5 per cent. Minister, these clear-up rates are pathetic. Not only is the government failing the Canberra community in preventing crime but you are also failing to solve the crimes.

Minister, you know that since Labor was last in office your government has presided over a reduction in the rate of sworn police officers per 100,000 population in the ACT. The ACT then had a rate of 223 sworn police officers per 100,000 population, against the national average of 218 per 100,000 population, whereas now, even with your 50 extra, you have a rate of only 208 per 100,000 population. It is obvious that crime in the ACT is out of control and that your government has given up on catching criminals. Is it not true that the strike teams are having only a marginal effect on crime and that a continuous approach to crime prevention is needed, not just your bandaid solutions?

MR SMYTH: In the AFP, we have a very modern and very competent police force that targets crime. They use intelligence-based policing to make sure that this occurs. If we are talking about support for police and Mr Hargreaves wants to make comparisons between the support—

Mr Hargreaves: I take a point of order, Mr Speaker. The question does not go to support for the police; it goes to these figures.

MR SPEAKER: There is no point of order. Continue, Minister.

MR SMYTH: Mr Hargreaves, in his question, made comparisons between police numbers under Labor and police numbers under this government. If he wishes to raise comparisons in his question, then surely comparisons in answers are worth while. With the commitment this government has made compared to the all-time low that occurred in 1995 under Labor, the number of police officers has steadily increased. This government's commitment to funding officers to carry out their tasks has also increased. It is curious that this is the party that voted against every single budget that gave increases to police funding.

We have had some disturbing figures in crime results recently. The police are looking at those, and last year and again this year have had task forces and strike teams to address that crime. At the same time, prevention being better than cure, the community policing initiative started under Mr Humphries. Community police are now out there building relationships with communities to work towards the prevention of crime.

Mr Hargreaves may stand here and quote figures and make comparisons, but these are the people who have voted against every budget that increased police numbers and police support since we have been in government. Our initiatives, I believe, will be successful in combating crime.

MR HARGREAVES: I have a supplementary question. Given the disastrous state of affairs indicated by your own reports, and I suggest you go and compare them, do you still think that a 20 per cent reduction of crime is appropriate, let alone achievable?

MR SMYTH: Mr Speaker, I will not even speak in my defence. I will let Commander McDevitt say that the AFP will achieve it. Commander McDevitt said this at the latest briefing. The AFP will achieve the 20 per cent reduction that they have said is the target. They will endeavour to go further. If you look at the first four weeks of Operation Anchorage, the figures have gone down significantly. Indeed, in the weeks before Anchorage, there was something like 200 burglaries a week. In the second week of Anchorage I think it went down to 85.

Mr Speaker, I have been given a graph which I am very happy to table. It shows the decline of expenditure on policing during Labor's years in office. Under this government it has climbed steadily. I am happy to table that for the information of members. I present the following paper:

ACT Policing—Indexed expenditure—Copy of bar graph for the years 1989 to 2001.

Drug trafficking charges against student

MR HIRD: My question is addressed to the Attorney-General, Mr Stefaniak. What is the current situation with respect to a student who has been charged with drug trafficking within the territory?

MR STEFANIAK: I thank the member for the question. To assist Mr Hargreaves in respect to his last supplementary question, if you back the bill I am introducing tomorrow, Mr Hargreaves, you might see a drop like that for a few offences. That is the Bail Act.

In answer to the question by my colleague Mr Hird, there was considerable media interest in this matter last week. As indicated, a person who had been charged with very serious drug offences—

MR SPEAKER: Watch sub judice, Mr Attorney.

MR STEFANIAK: I am aware of that. The offences included possession of a traffickable amount of heroin. This person may have been able to avoid a prosecution had this person been deported. The Department of Immigration and Ethnic Affairs would have deported that person, a student whose visa had expired, unless the person was either in custody or the DPP issued a criminal justice stay certificate pursuant to the Commonwealth Migration Act. As that person was granted bail by the ACT Supreme Court last week, the only way of ensuring that the person remained here in Australia to face the charges against her was for such a certificate to be issued. Where the DPP issues a stay certificate he certifies that arrangements have been made to meet the costs of a person who is an unlawful non-citizen while that person remains in Australia for the purpose of being prosecuted.

I think understandable concerns were voiced last week at the prospect that the student might be deported if funds were not available to enable the DPP to meet any costs arising from the issue of a certificate. I can assure you, Mr Hird, that on Monday the DPP issued a criminal justice stay certificate in relation to that student so that she will remain in Australia to be prosecuted for the serious offences with which she has been charged.

At this stage it is not possible to estimate the costs, if any, which will need to be met by the DPP as a result of the issue of that certificate. This will depend on the extent to which the accused person has other sources of sustenance. In any event, as already noted, the costs are unlikely to exceed the cost to the territory had that person remained in custody until and throughout her trial. This government will ensure that criminal justice agencies such as the DPP are resourced so that there is no prospect that persons charged with

serious offences like trafficking in heroin are able to avoid prosecution by being deported. We certainly support the stance taken by Mr Richard Refshauge, the Director of Public Prosecutions, in this case and the action he has taken.

Amaroo

MS TUCKER: My question is directed to the Minister for Urban Services, Mr Smyth. At the end of last year residents in Burdekin Avenue, Amaroo, who bought their houses about a year ago on the understanding from reading the Territory Plan that there would be housing over the road and behind that a large pond and open space area, were told by PALM they will now have a preschool, two primary schools and a high school. Down the road there will be a shopping centre. The pond has been shrunk and the open space will now be used for playing fields. These facilities are shown on the Territory Plan as being located in other parts of the suburb and in the future adjacent suburb, but PALM decided to move them all to Burdekin Avenue some time ago without telling anyone.

Because all this land is defined under the land act, there is no need for PALM to go through the normal Territory Plan variation process, so the residents cannot do anything to stop this change. I understand that despite the residents' concerns you have recently agreed to the start of bulk earthworks for the playing fields and also to the start of the Catholic school to open in January 2002.

Could you confirm that this is the case? What is your response to those residents who believe they have been totally misled by PALM because the Territory Plan map was never updated to reflect these changes of land use and they would not have bought these blocks if they had known they would be living opposite schools and having lots of traffic pass their doors?

MR SMYTH: Mr Speaker, the nub of this question is the definition of defined land on the Territory Plan. Defined land is that which is shown on the plan as indicative only and may change when further planning work is done. Further planning work was done for this area of Amaroo and it was found that cross-ground flows of water and other factors meant that what was previously indicated to happen could not go ahead. To continue the use of the suburb and to re-jig the land, it ends up now that the best use for that area is the local schools, which will be a primary school, a Catholic primary school and a high school, and district ovals which can take into account the overland flows of water.

Many members, including you, I think, have written on behalf of constituents about this issue. The issue is about consultation. As the work unfolded and as the planning continued, when it became apparent that residential could not go on this site because of a number of factors, the planning commenced to change. The Territory Plan probably was not updated as quickly as it could have been, but consultation has now been undertaken with the residents. I can understand that if you bought expecting that there would be residential there you might be concerned at the change, but the reality is that we cannot build residential there. Oddly enough, the use of the district ovals in that area does help with the effects of water flows.

I believe that the way PALM conducted themselves in this regard is the standard way that they do it. I believe that the process is good. It is defined land under the Territory Plan. It is not set in concrete. I think the process is working reasonably well, but we need

to make sure that our consultation processes always work better. When areas of concern like this are brought to the government we will make sure that we take into account the lessons that have been learnt here.

MS TUCKER: I have a supplementary question. As you know well, I have tabled legislation in this place to deal with defined land. Will you give a commitment to this place to hold off from any decision until a democratic decision has been made about this very issue which you see as the nub of the question? I think the nub is about the community being sled, but we will pick that up. It is the defined land, in your view, that is the nub of the question. Will you wait until this place has democratically made a decision about the use of that concept before you make a decision on this Amaroo site?

MR SMYTH: Mr Speaker, I do not think in this case that we can hold off until that decision is taken. I believe that a tender has been let for some of the preliminary earthworks. Organisations like the Catholic Education Office are keen to proceed with the building of a school to meet the needs of the residents of that part of Amaroo and Gungahlin, and I think it is appropriate to continue. The process has gone according to what is defined currently under law. I think people have a reasonable expectation that the law should be followed, and it is being followed in this case. I think it is reasonable for the development as is to go ahead, but, as I have said, we need to learn the lessons from this process. If Ms Tucker is successful, we may even change the process.

Mr Domenic Mico

MR WOOD: My question is to the minister for the arts. Minister, you keep saying that Dominic Mico has not been sacked. If he has not been sacked, will you return his car, which was part of a salary package, and let him back into his office?

MR SMYTH: As I said yesterday, Mr Speaker, the contract, which would expire on 30 June, will expire on 30 June. Mr Mico will be paid until that day. If the car issue which Mr Wood raises is part of his package and it has been removed from him, I will seek advice from CETEC on what they will do about that situation.

MR WOOD: I think that is rather the terms of the contract, minister, rather than some pedantry about not being sacked. Let me take it further. Given the Chief Minister's praise for Mr Mico and the National Multicultural Festival, and given Mr Mico's acknowledged experience and competence in this area, what role would you see Mr Mico playing in future reviews of festivals?

MR SMYTH: Mr Mico, like all citizens, will have an opportunity to comment on the future of all festivals in the ACT, which is the purpose of setting up the Festivals ACT office.

Dog control—complaints

MR RUGENDYKE: My question to Mr Smyth, the Minister for Urban Services, concerns complaints about dogs. Minister, I am aware of two situations in Evatt where dog complaints are being handled in totally different ways and inconsistently by the department.

The first case is an example of a persistent problem, where the complainant has phoned on numerous occasions over a long period about vicious roaming dogs. The department has basically ignored these complaints. In the meantime, the complainant is so intimidated by her neighbour's dogs that she has installed surveillance cameras around the house so that she can check whether the animals are on the loose before going outside.

The second case, however, is a most bizarre comparison where it appears that the department has taken a dog from a family's backyard after just one complaint. The dog has been impounded for the last two weeks at a cost of $12 a day to the owners and will not be released before the matter goes before the DPP, whenever that might be. The owners have not been informed or provided with details of the complaint. However, they do know that their children were with the dog when this alleged incident occurred and they are certain that the dog did not bite anyone.

The owners have approximately eight references from neighbours supporting their case but still the department will not budge over this one complaint. The owners have been told that this will be a case of going to court or putting the dog down. The owners of this dog in fact have to seek permission to visit their dog on weekends. There has been no mediation or any other steps in the process. The dog was immediately impounded after this one complaint and taken out of the backyard, headed for death row.

Can the minister explain the inconsistency in the management of these two cases? I will provide details because I know the minister will take the question on notice.

MR SMYTH: Mr Rugendyke has offered to provide details. I will get those details off him. The handling of dogs is a vexed issue. There are always two sides to a story and often my office gets complaints where, if you listen to one side, the other side are totally at fault; and you get a vice versa situation if you listen to the other side of the story. I think, in the main, Domestic Animal Services officers often exercise the wisdom of Solomon trying to work out the truth.

In regards to both cases, I will have to seek information from the officers involved. They have discretion in the way they act and they do so in accordance with the legislation. I will get the details off Mr Rugendyke and respond as quickly as I can.

MR RUGENDYKE: Mr Speaker, I ask a supplementary question. Could the minister also provide details of the role of the DPP in respect of this matter? I would be interested to know what process there is for keeping dogs impounded while matters are being considered by the DPP.

MR SMYTH: Again, I will get further clarification on that. But a dog taken into custody under the act can be held until the matter is resolved, as it were, by the court. I will get the details of both cases for Mr Rugendyke.

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

Parking meters at Woden

MR SMYTH: Mr Wood asked a question on 6 March on parking. The answer is as follows: the Department of Urban Services has advised that the parking meters adjacent to the Woden shopfront are limited to a maximum of 15 minutes. The reason for this limit is to ensure a high turnover of vehicles in these premium short-stay parking spaces. However, following consultation with ACT Roads and the shopfront, it has been agreed to increase the time limit to 30 minutes to allow shopfront customers more time to complete their business. The signs and the parking meters will be changed during April 2001.

Integrated document management system

MR SMYTH: Yesterday Mr Quinlan asked a question in relation to the IDMS system. The status of the IDMS procurement project is that, as should be the case for any large and complex procurement project, industry was asked late last year to provide responses to a request for a proposal, an RFP. An RFP is not a request for tender. An RFP is a procurement mechanism commonly used as the first of two stages in projects with a significant development component to gauge the likelihood of the industry being able to deliver a suitable solution. It is also a mechanism that allows for the greatest possible innovation by industry in providing a response and therefore avoids prescriptive and mandatory requirements at the detail level.

The IDMS request for proposal documents issued late last year advised recipients that the government had a number of options available to complete the second stage of the procurement process following assessment of the RFP. One of these options was to issue an RFT, a request for tender. An RFT is a mechanism you use when you have established greater certainty over what industry is capable of delivering and is the document that is intended to become the basis for a future contract for the delivery of products and services.

Following the evaluation of the RFP and an analysis of what was capable of being delivered, the requirements for the IDMS project were refined and the option of using a request for tender for the second stage of the procurement process is being exercised. The detailed requirements for the RFT process have been established and documented, and the RFT will be issued shortly. This is a normal and prudent procurement practice for the delivery of a complex project by a project team that has the support of significant probity and other process advice and support.

Mr Quinlan then asked some specific questions. Five responses to the request for proposal were received. The RFP contained objective measures for evaluation and assessment purposes. In fact, it contained 267 detailed objective measures. As I have indicated, it is not being reissued. We are moving to the second stage of the procurement process as planned. Given the above, no money has been wasted on the procurement process as it is proceeding as planned.

Public Sector Management Act—executive contracts
Papers and statement by minister

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): For the information of members, I present the following papers:

> Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—
> Long term contract:
> Tu Pham, dated 8 March 2001.
> Temporary contracts:
> Kimberley Pierce, dated 1 March 2001.
> Geoff Keogh, dated 5 March 2001.
> Mandy Hillson, dated 5 March 2001.
> Schedule D variations:
> Beverley Forner, dated 1 March 2001.
> Paul Dugdale, dated 6 March 2001.
> Graeme Dowell, dated 28 February and 5 March 2001.
> Allan Eggins, dated 1 March 2001.
> Allan Towill, dated 6 and 8 March 2001.
> Sue Ross, dated 1 March 2001.

I ask for leave to make a short statement in respect of these contracts.

Leave granted.

MR HUMPHRIES: These documents are tabled in accordance with sections 31A and 79 of the Public Sector Management Act, which require the tabling of all executive contracts and contract variations. Members will recall that the contracts were previously tabled on 28 February. I would like to alert members, as usual, to the issue of privacy of personal information that may be contained in the contracts and ask members to deal sensitively with the information in respect of privacy of individual executives.

Papers

Mr Humphries presented the following papers:

> Remuneration Tribunal Act, pursuant to section 12—Determinations, together with statements for:
> Part-Time Holders of Public Offices—Determination No 78, dated 28 February 2001.
> Members of the ACT Legislative Assembly—Determination No 79, dated 28 February 2001.
> Chief Executives and Executives and Full-Time Holders of Public Office—Determination No 80, dated 28 February 2001.

Totalcare—provision of services

Debate resumed.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (3.18): Mr Speaker, I would like to thank Mr Stanhope for giving the government the chance today to speak on the issues he has raised in his motion on Totalcare. It is important that the government take up the opportunity to demonstrate, first of all, our commitment to Totalcare and its employees and also our commitment to the provision of quality services to the residents of the ACT, matters which are appropriately raised in this debate.

I am always happy to remind members of this place of the government's proud record in the provision of quality service to residents of the ACT. I am delighted to have the opportunity to remind the Assembly of our continuing efforts to improve the quality of service delivery, the effectiveness and efficiency of that delivery and the many reforms we have championed in that area.

I remind the Assembly of the government's demonstration of its commitment to Totalcare and its employees. This is reflected in a number of factors. The government has transferred significant assets and functions to Totalcare. At 30 June 2000 Totalcare had over $80 million in public assets which it held on behalf of its owners, the ACT community.

Mr Speaker, no-one sets up business enterprises to fail, and we certainly do not. The government has supported the efforts of Totalcare's board and management and its staff to improve Totalcare's competitiveness. Members will be aware of the extensive program of business viability reviews which Totalcare has undertaken with support from staff, unions and the government. Significant public resources have been invested to restructure Totalcare and position it for a successful future in the competitive markets in which it and its staff must create their own future.

The government has been a patient owner and not made outrageous or inappropriate demands for dividends on Totalcare whilst Totalcare restructures its operation. The government has provided access to additional funding to enable Totalcare to fund restructure costs.

Recognising the origin of the various Totalcare business units in government departments, the government provided tied contracts to Totalcare in relation to the business activities it transferred to Totalcare. These arrangements were generally long-term contracts which allowed Totalcare some breathing space to restructure and improve the competitiveness of the various business units. The majority of these arrangements continue to this day.

The government has actively supported Totalcare's efforts to develop new business activities to give Totalcare and its employees a more secure future. This includes Totalcare's efforts to win interstate business and, more recently, its joint ventures in the Williamsdale quarry and with Stericorp in relation to treatment of medical waste. Totalcare and its employees have benefited from the government's demonstrated commitment in this and a range of areas over the last few years.

Mr Stanhope's motion has another, perhaps even more important element. That is his request for the government to demonstrate its commitment to the provision of quality services to the residents of the ACT. The only difficulty I have at this point is where I should start with what could be a very extensive catalogue of the government's action in respect of that subject and which of the manifold achievements across all portfolio areas warrant particular attention in the limited time available in today's debate.

In my own portfolio areas, the government's commitment can be seen in our actions to do a number of things: first of all, creating a framework to increase the social capital of the ACT; secondly, improving community participation in the development of the government's budget to ensure the government has active involvement by the population of the ACT in the services we deliver and programs that the community values. The creation of Canberra Connect to increase the accessibility of many government services and make it easier for residents to deal with government agencies is another demonstration of the desire to improve access to those services.

It was only last November that the Assembly considered a final package of bills which were put forward to reform the regulation of utilities in the ACT. The government invested significant resources in that project, as did many community groups. That project is just one example of the commitment made by the government to increase and improve the range of services residents of the ACT enjoy.

Obviously a body like Totalcare has experienced problems in recent days as the government has tested its capacity to deliver services in an effective way by inviting the opening of tenders for some of the services Totalcare provides or has provided. There has been criticism in particular by Mr Stanhope, I assume, of the decision to open ACT Housing maintenance to competitive tender. He has certainly been very critical of the outcome of that. I do not think he has been critical of the fact that in a fair and open tender Totalcare was unsuccessful. I assume his comments relate to the fact that maintenance was opened up to competition in the first place. If I am not right about that, I am happy for him to put the record straight.

It is part of the process of ensuring that the ACT community has high-quality services that Totalcare be tested from time to time in various ways. Establishing whether there are better, more effective ways of providing those services by somebody else is one such example. We would not face the problem of testing the quality of service of Totalcare or any other agency of government if we did not on occasions invite other bodies to compete for their work. In other words, if we did not ask the question, we would not get an answer we did not like.

We cannot honestly say to the ACT community that we are delivering good value services unless we test that proposition from time to time. Allowing others working in the same field to offer better or more effective services in those fields is a way of ensuring that we provide high-quality services.

If the work had not been put out to competitive tender, the ACT community and ACT Housing tenants in particular would have been denied the opportunity to have access to enhanced services and enhanced value for money, which the successful tenderers have offered. That is not my assessment; that is the assessment of the tender board. The

successful tenderers will now be required to deliver enhanced services and value in accordance with their contractual obligations. If the government and ACT Housing in particular had not pursued this approach, then there would have been a clear example of the government not being committed to the ongoing delivery of quality services and value for money to ACT taxpayers.

About three weeks ago, following the announcement of the outcome of the ACT Housing tender, I met with representatives of the successful tenderers to encourage them to strongly consider ensuring that those present Totalcare staff whose jobs were at risk by virtue of the loss of the contracts by Totalcare are considered for employment in the successful tenderers' ventures. They have, after all, considerable experience in the field in which those tenderers are now to operate. Meetings have been held between Totalcare and the two successful tenderers and I understand—this was certainly the gist of the undertakings to me—that many Totalcare staff will be exploring the opportunities the new tenderers will have on offer. With government support, Totalcare is also working with its staff on transition issues, and senior Totalcare staff have travelled to Sydney this week to explore opportunities for Totalcare staff there.

As I have said, there are two important elements about this motion. One is the question of commitment to Totalcare; the other is the question of commitment to quality services. It may be on occasions that there is some conflict between those requirements. I hope that that will be a phenomenon that occurs very rarely. But if it does occur, the obligation on the government is to ensure that ACT citizens receive value for money and are having quality services delivered to them across the obligations the government undertakes.

I believe our first obligation must be to the community. In saying that it is not therefore necessarily above the community, a commitment to particular government enterprises does not mean that there is any lack of commitment on the part of the government to Totalcare or indeed any other government activity.

I put on record today in this debate that the government is totally committed to assisting Totalcare to restructure its activities in such a way as to face the future with greater confidence than perhaps it has at the moment. Clearly the loss of a major contract and the threat of loss of employment at Totalcare come at a cost to morale of employees in Totalcare. I acknowledge that, and it is important that we work to relieve that.

We do not relieve it by cacooning government enterprises which are working in the marketplace. I distinguish between those things we do which are community services and the things we do which are basically commercial. We do not enhance our assets by protecting them from competition. If we are to expose them to competition, we are obliged to acknowledge the obligation that falls on us to work to lift the performance of such bodies to allow them to compete in these circumstances.

I am very pleased about the efforts made by Totalcare in the fields of the Williamsdale quarry and the Stericorp potential joint venture, because they demonstrates the capacity of Totalcare to focus on things that they can do well, where they can be competitive in every sense of the word and where they can provide safety and security for their employees into the long foreseeable future.

Not everything Totalcare does at the present time admits of that possibility, but we need to ensure that where we can provide a cost-effective and efficient service to the community of the ACT through Totalcare we do so. That is the commitment the government makes.

I have had frequent discussions with the Totalcare board. I intend to continue to work with them closely on this matter. I hope that the indication I have given today of the government's view on this will assure members, and particularly employees of Totalcare, that we have an undivided and complete commitment to the viability of that business and we will work very hard to ensure that that is realised over the coming years.

MS TUCKER (3.31): One of the key rationales provided by the government through the media for Totalcare losing the contract with ACT Housing was the fact that Totalcare employees are employed under the Public Sector Management Act. So, contrary to what Mr Humphries has just said, it was not about quality of service. It was about costs. This is one of the key issues we have to address as a society—how we are to make these judgments and what the implications and consequences of always making a decision based on least cost are.

It was presumed that employment practices through Totalcare's cost structure were too high and so worked against them in seeking to secure the ACT Housing contract. We have to ask the question: too high compared to what?

One aspect of the changing nature of workplace arrangements that the Greens see as destructive is the growing casualisation of the workplace and the associated erosion of working conditions and of security of employment. Mr Humphries talks about social capital. I would have thought a critical aspect of social capital was that workers within the community not be constantly in fear of not having employment and not being able to pay their way. The lack of available secure employment is now a significant part of workplace culture in Australia.

None of this issue is reflected in employment figures that governments collect. People are deemed to be employed if they have one or two hours employment a week. People are deemed to be employed no matter what their working conditions or their rates of pay.

It is too simple to argue that employment will not be lost when another company takes up the contract Totalcare has lost. The issue is more complex than simply one of employment numbers. Underlying the view of government in this instance are issues of quality of life.

Public sector employees in the ACT enjoy long service leave, maternity leave, special leave, paid holidays, reasonable expectation of incremental pay increases and a fairly strong bargaining position when it comes to enterprise bargaining. The casual work environment, however, offers minimal conditions and a poor bargaining position. The increase in casualisation has resulted in a growing discrepancy between employees at the top and those at the bottom of the pecking order.

Too many people in the work force are trapped in an environment that takes too much or too little of their time. The present industrial relations environment has seen those employees in weaker bargaining positions lose out. Where the imperatives of global

capital have led to an ongoing erosion of conditions at the bottom end of the labour market, a shift to casualisation is a direct attack on living standards.

One fundamental issue governments across the world need to address is the impact the practices of employers and service purchasers have on the working conditions and living standards of their constituents. It is a far from adequate response for governments to offer reasonable conditions to their own employees, perhaps due to pressure in parliament, and then shift the costs of service delivery via other businesses on to people employed as casuals or in competition with casual employees.

The tendency of governments to shape their practices as a mirror of private business has had a number of unfortunate consequences: increasing pressure on the working poor; an increasing number of working poor; the growing vulnerability of women and marginalised groups; the fragmentation of workplaces, leading to diminished occupational health and safety standards.

Greens across the world would rather see governments, through their own practices and through regulation, be more active in defending and extending the rights and conditions of people at work rather than bowing to the interests of business. Unfortunately, none of these concerns were taken into account in the decision-making process government has followed in making the decision to contract other businesses for ACT Housing.

I remind members that on a global scale we have negotiated the General Agreement on Trade in Services. This is entirely consistent with the Australian government's approach to that agreement, which is that there should be absolute trade in services. The very notion of public services is not to be supported and is seen as a barrier to trade. The Liberal government here may not be aware of that. I do not know how much they engage in debate with their federal colleagues about these issues, but if they care to look at the international discussion they will see that that is the bottom line for GATS.

I think I heard Mr Humphries say there may be some areas where he did not think competition was appropriate. I heard Mr Howard say last week that he was pulling back a bit from competition policy, although when I searched for detail of in exactly what area he thought it was appropriate to pull back from there was none. This is obviously because he is concerned about the general reaction in the Australian community to this obsession with competition and market principles. There might be electoral consequences for not starting to acknowledge that this may not be the most fantastic thing after all. Of course, One Nation are picking up in a big way on this issue as well and are the main threat to the Liberals and the conservatives.

What we have in this debate today is a mirror of international discussion but on a local level. People are raising concerns about governments taking decisions on least cost. The government is trying to put it as a quality of services issue, but their own media has said that it is about the costs of providing services in a public service scenario.

The way the government tries to separate itself from the real consequences of this and not engage in discussion about it is very concerning, particularly from a government that claims to be interested in social capital.

MRS BURKE (3.38): I would like to respond to the opening remarks made by the Leader of the Opposition, Mr Jon Stanhope, earlier today. Of course, the ACT is not alone in corporatising particular government trading enterprises. The competition principles agreement brought in by Paul Keating and agreed to by all jurisdictions clearly states that the parties, where appropriate, will adopt a corporatisation model for these government business enterprises.

I was very interested to hear Mr Stanhope's understanding of what corporatisation is all about. It would appear that he is out of step with some of his interstate counterparts on this matter. However, rather than try to match his rhetoric, I thought it would be useful to compare his remarks with those of a former Western Australian minister for micro-economic reform, a certain Dr Geoff Gallop:

> All Western Australians are starting to benefit from a new approach by government for the provision of commercial goods and services. As part of its commitment to reforming the public sector, the WA Government has embarked on a program of 'corporatisation' so that its trading agencies can operate more effectively and efficiently. The process will produce economic and social benefits for the whole community—including improved services, lower taxes and charges, more jobs and increased funding for social programs.
>
> Corporatisation is a means of making government agencies more competitive and efficient.
>
> It involves the introduction of policies and systems so that agencies function in an environment that minimises the cost of producing goods and services.
>
> The corporatisation process is generally applied to what are known as Government Trading Enterprises—those public sector agencies which charge for the goods and services they provide and are largely self-financing.
>
> For some time now, Government Trading Enterprises have been required to improve their performance by adopting a more commercial approach to their operations. Corporatisation aims to achieve further increases in efficiency by requiring Government Trading Enterprises to operate in a more accountable and competitive environment, 'at arm's length' from the Government.
>
> The principles of corporatisation are being adopted around the world as governments seek to improve performance and reduce the financial burden on the community.

I wonder whether Mr Stanhope is aware that Dr Carmen Lawrence was then Premier of Western Australia, and he may be interested to contemplate what this highly respected politician also had to say about corporatisation. She said:

> The activities of Government Trading Enterprises are very wide-ranging. Many Government Trading Enterprises, particularly those which provide the State's basic economic infrastructure, are household names. These include large businesses like the Water Authority, R&I Bank, Westrail, the Fremantle Port Authority and the State Energy Commission. Other Government Business Enterprises provide highly targeted economic services—such as the West Australian Meat Commission—or are engaged in cultural activities—such as the Perth Theatre Trust and the Lotteries Commission. Units within agencies which provide special services to other parts of

> the public sector—such as printing and building services—might also be established as Government Trading Enterprises.
>
> Many of these authorities and enterprises have, by their achievements, earned the respect and support of all Western Australians. At the same time, because their efficiency has crucial implications for the efficient operation of the whole economy, the Western Australian Government wants to ensure they work consciously and deliberately toward a high level of performance for the future.
>
> The emphasis on lifting the performance of these elements of the public sector is also consistent with the resolutions of the special Premiers' Conference held in Brisbane in October 1990. At this conference the Prime Minister and all the State and Territory leaders affirmed their commitment to fundamental reform of their Government Trading Enterprises.
>
> The Western Australian Government believes that the corporatisation framework provides an appropriate and effective means of achieving the necessary improvements in performance. The inherent management principles may however be more generally applied throughout the public sector.

I do not think Maggie Thatcher could have said it any better herself.

MR QUINLAN (3.43): Maggie Thatcher would have argued for the case and not against it. Mrs Burke talked about corporatisation and then went on about government trading enterprises. I am a little confused.

Mrs Burke, welcome to the new millennium. Let me introduce you to a new term which postdates Maggie Thatcher, as a lot of modern society does. It is "backsourcing". It is a word I am sure John Fahey understands, having in recent times been the scapegoat within the federal government for the backflips that have been necessary in relation to the failure of outsourcing. I have to agree with you that government business enterprises do from time to time need to be reformed, but I do not think that reform should be as fundamental as putting them out of business. That is probably taking it a little too far. The process of the housing maintenance contract, which is the latest event to strike Totalcare and the event which I am fairly confident precipitated Mr Stanhope's desire to move this motion, is consistent with the arguments you have put forward.

I am fairly confident, from what I have heard in this place and what I have heard outside this place, that the housing maintenance contracts that have been let to two Sydney companies are, from a whole-of-government perspective, a bad commercial deal. When we taken into consideration the costs of the job redundancies that are involved in this particular process and when we take into account the fire sale of any equipment and assets and the losses that would arise from the fire sale of the assets associated with this particular business, I am fairly confident that we have done a bad deal.

We have probably done a bad deal despite the fact that we are now letting two companies in the private sector come into town. No doubt they sharpened their pencils to get into town. We will now close up shop at Totalcare. We do not have the flexibility to stay in business, particularly as we have let the lot go. Nobody had the wit or the foresight in relation to this housing contract to say, "We will let half of it to one of the Sydney companies, the better one, and we will leave the other half with Totalcare and see which one performs better. We will get the maximum benefit of competition. We

will not create a little oligopoly of two companies in town, with the risk of prices going through the roof, but we will use some strategic commonsense to preserve the capacity within Totalcare so that when it is reviewed and when it focuses on its renewal it could come back into the business and take over the whole job again."

We have heard in this place that the Totalcare bid was competitive. That is code for the fact that they did not price themselves out of the job at all. We have since heard some rationalisation that it was on the basis of enhanced services. Before this debate closes, I would like to hear from government what those services might be so that we are assured that there will be continuing improved service at a continued economic price.

On the broader front, the loss of functions by Totalcare means that the size of the organisation changes and its capacity to absorb fixed costs changes, so we change the economics of the thing. I wonder whether the government took into account the fact that Totalcare still has a management structure and fixed overheads that have to be absorbed over shrinking business.

I would like to avail myself of the opportunity while I am on my feet today to mention some reservations I have in relation to the Stericorp partnership arrangement that is to be made whereby this particular company will undertake, as best I can describe it, a neutralisation of bugs in hospital and medical waste and some recycling of the product. It is fairly clear from what I have been able to glean—and I have had discussions with the chief executive of Totalcare and a representative of Stericorp—that the success of this business will require a considerable increase in volume. They have projections. Even though the particular process is claimed—I stress that word "claimed"—to be safer and less polluting than the current process, the current incinerator in its upgraded form, the fact that we have to take on significantly more volume in order to make the economics of this Stericorp organisation work and the upgrade that is apparently planned for the incinerator disturb me.

I am concerned for the future of Totalcare. I am concerned to see a business that loses such a clean operation as the housing maintenance, apparently even though it was competitive, and is immediately out of the business at the same time increase its activity in a possibly polluting enterprise within the territory. Within the ambit of Mr Stanhope's motion, I am certainly concerned as to level of service. That service implies service to the ACT community as a whole.

I would like to hear a couple of things from government in this debate if it is possible. What are the additional services we are going to get from these private sector companies that have come into town and replaced Totalcare on its housing maintenance? Secondly, I would like some real assurances that we are not effectively going to increase the amount of pollution in the ACT, whether it be airborne pollution or whether it be the increased requirement for landfill that apparently arises out of the Stericorp operation.

Quite obviously, one agrees with the sentiments of the motion that Mr Stanhope has put forward. I comment again on what Mrs Burke said about outsourcing. Conventional wisdom is changing as we speak. Anyone who wants to borrow a book, I have a little book here called *The Death of Economics*, written by Paul Ormerod, who predicted quite some time ago that we would arrive at the day we have arrived at today where we are

starting to challenge the concept that markets are perfect and that competition is the only basis upon which to make commercial decisions.

Question resolved in the affirmative.

Minister for Business, Tourism and the Arts
Motion of censure

MS TUCKER (3.52): I move:

> That in respect to the decision of the Canberra Tourism and Events Corporation (CTEC) to relocate to Brindabella Park Commercial Centre at Canberra Airport the Assembly:
> (1) censures the Minister for Business, Tourism and the Arts for his refusal to obey an order of the Legislative Assembly, being to provide documents to the Clerk of the Assembly for inspection by Members;
> (2) expresses concern regarding:
> (a) access for clients and staff of the Corporation;
> (b) support for commercial development in a location which is contrary to the principles of the Territory Plan;
> (c) the possible failure of the Corporation's Board to comply clearly with the requirements of clause 15 of the *Canberra Tourism and Events Corporation Act 1997* "Disclosure of Interest";
> (3) draws the attention of the ACT Auditor General to these concerns, and asks him to conduct a performance audit of this decision of the Corporation.

This motion has come about because Canberra Tourism and Events Corporation decided to move its office to Brindabella Park at the airport and the reasons for this move have not been satisfactorily explained by government or CTEC. The move is concerning for a number of reasons. Many of us were very surprised to see this move because of the fact that there is no public transport to the new location, and this is obviously an issue for staff of CTEC as well as for the clients of CTEC.

It was also quite bizarre for the government to be supporting the move of one of its own corporations into a commercial development which basically contradicts the spirit of the Territory Plan. The other interesting factor which came up as we looked at this matter was the perception that there were close ties between the airport and CTEC, and there could be a conflict of interest which needed to be declared under the legislation.

To understand better the reasons for this move by CTEC, I was supported by a majority of members to order that all papers related to the decision should be made available to members in this Clerk's office. The first part of my motion calls on the Assembly to censure the minister because of his response to that order. I will quote from Odgers' *Australian Senate Practice* and from *House of Representatives Practice* on the issue of orders for the production of papers. Odgers' *Australian Senate Practice*, at chapter 18 which relates to documents, concludes after its analysis:

> These precedents demonstrate that orders for production of documents are amongst the most significant procedures available to the Senate to deal with matters of public interest giving rise to questions of ministerial accountability.

It then goes on to say:

> Because governments have usually complied with orders for the production of documents, the question of what the Senate might do if it is considered that the government had without due cause refused to produce a document has not been fully answered. The question remains whether the Senate, to punish the government for not producing a document, would be prepared to resort to more drastic measures than censure of the government, such as refusing to consider government legislation. It is also open to the Senate to treat a refusal to table documents as a contempt of the Senate ...

The *House of Representatives Practice* section on orders and resolutions of the House states:

> Other than in relation to matters such as its power to send for persons, papers and records and its powers in regard to enforcing its privileges, decisions of the House alone have no legal efficacy on the outside world.

In other words, the parliament's power to censure persons, papers and records is very strong.

It is clear, Mr Deputy Speaker, that this is a serious issue. This minister has refused to comply with an order of this Assembly to table documents. He initially agreed to comply. The documents were to be presented to the Clerk. In fact, they were but they had significant information blacked out. The minister then apologised to the Assembly and said the situation would be remedied and the full information given to the Clerk. This did not happen. Instead, I received a letter from the minister on 14 March, in which he said:

> I am writing to inform you that releasing the Commercial-in-Confidence documents on CTEC's relocation at this stage would not only be potentially damaging to the lessor but is likely to prejudice the finalisation of a lease which is beneficial to the Corporation.
>
> The Government is committed to the principle of open and transparent government and would make available the lease to Members when negotiations are completed. However, at this stage there needs to be a balance between premature disclosure of confidential negotiations over the objections of the other party to those negotiations and the requirement for disclosure of details of contracts by government. In this case I have decided that the disclosure of details reached in the negotiations, excluding rental details, is appropriate.
>
> To overcome the non disclosure of sensitive information at this stage, Mr Peter Stainlay, CEO, CTEC has advised me that he is available to brief Members on the relocation decision process. Should you wish to be personally briefed ...

And so on. This is most unsatisfactory. It is a refusal to obey an order for papers of this Assembly. The minister seems to think a briefing with the CEO of CTEC is somehow an appropriate alternative. This is not the case. I did accept the briefing but it was not in my mind that it was in some way an alternative to what the Assembly had asked for. I was interested to hear what the CEO had to say, and what he had to say left me with more questions than answers.

We know that, more often than not, this government treats motions of this place with disdain. We are getting used to that. But this is not just a motion—it is an order. I do not believe that this government is taking nearly seriously enough the views of this parliament. The debate yesterday is a good example. While I understand that the executive has certain rights, it is interesting to me that the fact they are a minority government does not seem to have much impact.

But getting back to the question of the minister's refusal to obey the order for papers: it is also very important to have on the record again the fact that we did not ask for the documents to be tabled in the Assembly—we asked for them to be made available for inspection only by members in the Clerk's office for 10 working days. Mr Deputy Speaker, this was because at the time concerns about commercially sensitive information were put to us, as a parliament, by the minister. We listened to those concerns and we responded in a cooperative way.

The fact that the minister now has the gall to tell us we cannot see the full information because of commercial sensitivity has to be condemned by this place. The minister does not seem to understand that there is something equally as important as, if not more important than, commercial sensitivity, and that is the public interest in ministerial accountability. Does the minister not understand the importance of these tenets? Does he not believe that members have the right to make judgements on these matters? Or is it that it is, in his view, just a game which you play to win regardless of the means.

This censure, I believe, could be a no confidence motion in different circumstances. This position is obviously one of the whole government, including Mr Moore. It is really the government once again showing its colours, and we just hope they are judged by the community accordingly in October.

The second part of my motion has three points, the first of which is to express concern about access to Brindabella Park for staff and clients. As members know, there is no public transport to the airport. Clearly, this is a problem for staff who rely on public transport.

I raised this matter initially with James Service in Mr Quinlan's committee inquiry into the draft budget. Mr Service explained that the airport was going to provide a bus service and that the corporation would help staff get to work, if necessary by taxi. Later, when I had a meeting with the new CEO, he also assured me the needs of the staff and clients would be accommodated by this bus service. However, when I asked what the service would be, the answer was "a regular bus service". So I pursued the question: what is a regular bus service; what do you mean by a regular bus service? Unfortunately, there was no greater detail given. I then asked what hours the staff worked. I was told that, depending on the work, the day could start at 8 am and go late. I asked whether a regular bus service will provide a service for people who start at 8 am and work late, and the answer to that was not known either.

Then, of course, we come to the whole issue of access for clients. I was particularly interested in the multicultural festival and Floriade because, as most of us know, there is intense interaction and communication between organisers and artists and community organisations in the lead-up to these festivals.

Not only was there no analysis of the transport needs but these two events were not even listed in the table of clients which was among the documents provided by CTEC for our inspection in the Clerk's office. That bit was not blacked out. There was a list of clients. It was quite amazing to me to see that there was a V8 car race listed as a client, there was a government listed as a client, there was a JG Service Pty Ltd listed as a client, but there was no multicultural festival or Floriade. There has been no satisfactory explanation so far for this omission.

So what is the situation? There seems to be, for some reason, absolute faith in CTEC that the Capital Airport Group will look after all their transport needs, even though they do not appear to know what those needs are, let alone communicate them to the airport group which, I do not need to remind members, is a private company and, if it is like most businesses, will have as its mission statement that it must maximise profit for its shareholders. Why would any business basically write a blank cheque in this way? Why should CTEC assume such a thing, unless it is the case that CTEC just does not really care about the transport needs of its workers or the success of the multicultural festival and Floriade? Clearly, that last possibility is becoming more a probability in the minds of many of us as the days pass, with growing community condemnation of CTEC's management of the multicultural festival and the extremely unfortunate treatment of Domenic Mico as director of that festival.

I thought I would have a look at what the transport needs might be for a festival such as the multicultural festival. I have just had a look at what I would think could be the numbers of organisations and community groups and artists that might be wanting to communicate with the director of the festival and CTEC in the build-up to such a festival. I have talked to people who have a fairly good sense of what the numbers are and I am told that there are around about 70 to 80 ethnic community groups, over 30 artistic groups, over 150 to maybe 200 artists and, as I understand it, at least 15 or so embassies.

I have been able to find that out and I think the airport should know about that because they are supposedly going to be providing transport for this festival. I would have thought it was fundamental for any business that was seriously working to maximise profits for its shareholders to understand this kind of analysis because they are apparently offering a bus service to accommodate the needs of this event.

Mr Deputy Speaker, the concerns about access to Brindabella Park have in no way been addressed. Perhaps we will see the Capital Airport Group now show itself to be an exemplary corporate citizen and provide, at some significant cost to itself, a bus service which addresses these access concerns. However, until that happens there will be a very big question mark over this choice of location.

The second point in the second part of my motion deals with the Territory Plan and the fact that this major commercial development does not fit with the sentiment of that plan. The principles of the Territory Plan, as subscribed to by this government and by this minister, as they apply to commercial development, are:

- That Civic Centre will remain the prime metropolitan centre for commercial, entertainment and tourist activities

> An appropriate range of commercial activities will be encouraged at each level of the planned hierarchy of civic, town, group and local centres.
> - Changes to the pattern of development within commercial centres will be permitted … subject to consideration of the likely impacts on the planned hierarchy of centres.
> - And that the preferred location for major new office developments are town centres or out of centre office sites which are accessible to public transport—

and I stress "which are accessible to public transport"—

> Civic Centre and the Parliamentary Zone.

This massive new commercial development at the airport answers none of these requirements.

Members may say that it is out of our control—that this is federal land, this is a private organisation. But the very disturbing reality is that Mr Smyth has endorsed this development and happily announced to Ted Quinlan's committee, in answer to a question I asked, that the plan was developed in consultation with the ACT government. This is the same government that is supporting a change of use from commercial to residential for a commercial joint venture at Fern Hill because, and I quote from the preliminary assessment:

> There has been a low demand for high technology based commercial land use at Fern Hill and other parts of Canberra over recent years.

This is also the government which claims to be committed to reducing greenhouse emissions but wants to build a freeway for the workers who have to leave Gungahlin every day because there are inadequate employment opportunities in that town centre. There is absolutely no method in their madness, Mr Deputy Speaker.

The last part of my second point is the perception of conflict of interest. Conflict of interest is particularly hard to nail down inside a tiny world like Canberra. It is always perceptions as well as realities that have to be dealt with. While the organisations involved may be technically and legally quite separate, as the legal advice suggests, the actual people involved in the decision-making process may not be quite so separate. It is extra important then to make explicit that any possible conflicts of interest are addressed and resolved.

I will try to explain the various levels there are involved. On the board of CTEC is the general manager of both the Capital Airport Group, which manages the airport, and Canberra International Airport Pty Ltd, which owns the airport lease and is said to be responsible for the Brindabella Business Park development. Both companies are owned by the same business and share staff and phone numbers.

Chair of the CTEC board is the son of one of the Capital Airport Group directors, which is Jim Service. Father and son are business partners and the fee for the son to sit as chair of CTEC and the fee for the father to sit on the board of the Capital Airport Group are both paid into the father and son business, which is JG Service Pty Ltd. (*Extension of time granted.*) This business happens to be one of the major tenants of Brindabella Park,

as is the Capital Airport Group which includes the father on the board and now CTEC with the son as chairman.

There is no conflict of interest, CTEC's legal advice argues, because the company which technically owns Brindabella Business Park is Canberra International Airport Pty Ltd whereas JG Service Pty Ltd, through the father, is linked to Capital Airport Group. In its instructions to the law firm which gave the legal advice, CTEC has stated that Capital Airport Group has no involvement in the Brindabella Business Park development. Mind you, both companies are wholly owned by Capital Property Corporation Pty Ltd, share the same phone numbers and managing director and work out of the same office. The Commonwealth receipt for the purchase of the airport has been made out to the Capital Airport Group, not Canberra International Airport. This is consistent with the airport newsletter, *The Hub*, which claims Capital Airport Group owns the airport and that the airport developed Brindabella Business Park. According to the Canberra Airport web site, Capital Airport Group, not Canberra International Airport, is managing the park.

Obviously the legal advice is claiming there is no link between the Brindabella Business Park and the Capital Airport Group. That is not the fact when you look at all these different documents. From memory, according to the documents that were lodged with the Clerk earlier this month, which I did inspect, it was the Capital Airport Group, not CIA, which negotiated with CTEC at the end of January about Brindabella Park accommodation.

When the new chief executive officer, Mr Stainlay, started at CTEC in February, he asked for an operational needs analysis. An expanded needs matrix was undertaken which widened the brief to include client interaction and public transport. It was the Capital Airport Group, not Canberra International Airport, which wrote back to CTEC inadequately addressing my concerns regarding public transport. Indeed, even in answer to a question on notice at the draft budget hearing of Mr Quinlan's committee regarding the bus service, it is the Capital Airport Group which is referred to. My question on notice was: "What are the details of the proposed bus service from the airport to the city and the percentage of CTEC staff using this service?" The critical point in the answer is that Mr Smyth said that the Capital Airport Group is currently negotiating with two prospective bus companies to operate between the airport and Civic. This is the response to a direct question from me about CTEC. At the end of the response I was informed that this bus also can be used for other people going to the airport.

It certainly does appear that the Capital Airport Group is very much involved with the operation and development of the Brindabella Business Park. At the end of the process the Canberra Tourism and Events Corporation subcommittee recommended that the CTEC chairman meet with the Capital Airport Group, not the very distinct and so-called independent Canberra International Airport, to finalise terms.

Clearly, the success of the airport and its managing body, the Capital Airport Group, is very closely linked to the business park. Clearly, the Capital Airport Group is intimately involved in the management of the business park. While CTEC can advise its lawyers that the Capital Airport Group has no involvement with the Brindabella Business Park development, clearly that statement in the understanding of ordinary people is questionable.

There are stringent requirements under the disclosure of interest clause of the Canberra Tourism and Events Corporation Act. Basically, that clause requires direct or indirect pecuniary or personal interest be declared to the corporation. There has to be a meeting, the meeting has to record that, the member cannot be part of a decision that is related, and it then has to be determined that that decision be communicated to the minister. That is an interesting point in itself because, as we know, Stephen Byron did declare an interest and stood aside. In the documents that I saw in the Clerk's office, I did not see a written briefing to the minister covering the issue of that declaration of interest which is required under the legislation. So I am not even sure that all of the documents were in the Clerk's office.

I ask the minister if he would table for us today, by close of business if possible, the briefing that, under the CTEC legislation, he should have received from the corporation about the declaration made by Stephen Byron. I hope to see that. I think all members would want to be sure that in fact that declaration and that written brief were, as the legislation requires, completed and communicated to the minister. As I said, it was not in the Clerk's office.

We know that the James Service and Jim Service matter has been seen as not being an issue. We also know that Mr Stainlay seemed quite surprised, but then he was not at that time familiar with the legislation, and it was after that that he sought the legal advice which I am still questioning. It has been suggested that this kind of relaxed approach is par for the course in the world of business. But it should never be par for the course when it comes to government corporations, however the legal advice is framed.

I would have expected the board members of government corporations to impose on themselves a standard of ethics as stringent as those we expect of public sector employees. Under the best practice notes attached to public sector management standards, conflict of interest can be actual, potential or apparent. The notes make the point that real and apparent conflicts of interest in the public domain are equally serious. Public employees are required to disclose both. In the context of a small group of business people engaged in a number of overlapping activities, as I have described above, real and perceived conflict of interest is a major issue of concern. It seems to me that this is a matter that should have been brought to the attention of the board.

The last part of my motion asks the Assembly to refer this matter to the Auditor-General—not that we formally refer it but we request him to look at this whole decision and the process through which this decision was made. I am asking the Assembly to support that because I think there are a number of very serious unanswered questions. Obviously, the Auditor-General plays this role and that is why we have this independent person to look at these sorts of issues. This government claims that it is not afraid of anything that it has done, that it has done everything correctly. This is what they are telling us. If that is the case, they should not have any concern about the Auditor-General looking at this if he desires to do so. This would obviously support their claims that everything is—

MR DEPUTY SPEAKER: Ms Tucker, do you wish to seek a further extension?

MS TUCKER: No, I will conclude at this point. I think that if they have nothing to be concerned about then they should not be afraid of the last part of my motion. I urge members to support my motion.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (4.16): Ms Tucker's censure motion rests upon her belief that information is being withheld from the Assembly. She perceives a conflict of interest in the negotiation of a lease for office space at Brindabella Business Park and she has concerns about access for clients and staff of the Canberra Tourism and Events Corporation. She also seeks reassurance with regards to planning and recommends a performance audit of the corporation's decision to relocate to Brindabella Business Park.

Mr Deputy Speaker, let me summarise CTEC's relocation process. The corporation's current lease was due to expire on 3 April, and has been extended until 15 May 2001. In May last year CTEC called for tenders from firms that could undertake an accommodation needs analysis. As a result, Bligh Voller Nield was appointed to perform the task and in September 2000 a final report was submitted addressing CTEC's accommodation needs.

An independent accommodation consultant retained by CTEC then advertised for expressions of interest to provide accommodation options. Twenty-two properties submitted expressions of interest. Four were assessed as meeting some or all of CTEC's requirements and were short-listed for consideration. Staff and constituent surveys were carried out and factored into the decision-making process.

Each of the four short-listed properties produced a submission, and these were evaluated by the independent accommodation consultant. Of these, one subsequently withdrew its submission, resulting in a final evaluation being made of the three offers. Two of these could not satisfy CTEC's requirements, including areas related to staff parking and security. Based on the consultant's recommendation, and having regard to CTEC's financial and operational requirements, the corporation's board concluded that the best option for the organisation and its staff was the Brindabella Business Park.

CTEC is currently negotiating a lease with Canberra International Airport Pty Ltd. This company is held exclusively by the Snow family interests. Neither Jim Service nor Mr James Service is on its board. They have clearly stated that they hold no interests in this company.

Mr Deputy Speaker, I would like to address Ms Tucker's motion as put to the Assembly. Firstly, we have the alleged failure to supply documents. On 28 February the Assembly asked me to produce information relating to the negotiation of this lease. I did so. Documents were made available but excluded items which were commercial-in-confidence—that is, the names of short-listed candidates and the financial details of their offer, particularly the dollar rate per square metre.

In addition, I offered detailed briefings by CTEC's chief executive. Two members of the Assembly have sought such a briefing. CTEC's chief executive in the briefings was able to say what type of information was commercial-in-confidence and explained why it

needed to be temporarily retained. After all, a rate per square metre cannot be confirmed until the lease is actually signed.

As soon as the lease is signed and registered, this information will be publicly available. This could be a week away at most. There is no attempt to withhold the information. In fact, proper processes apply and this is consistent with the disclosure requirements under ACT law, supported by this government.

This course of action was also consistent with legal advice obtained by CTEC that warned of possible liability consequences if commercially detrimental information was released. I note Ms Tucker has already referred to the letter that I sent to members when it was apparent that I could not release all the information immediately confirming that position.

Ms Tucker appears concerned about access for clients and staff of the corporation. Analysis of the corporation's main constituents was undertaken to see if the airport location posed unreasonable difficulty in access. It did not. Staff surveys were undertaken to identify staff needs. Eleven staff said they would use public transport if it was available. Responding to a subsequent bus transportation survey, three staff confirmed that they relied upon public transport. Brindabella Business Park is now in the process of arranging an appropriate bus service.

There is ample staff parking on site at rates significantly less than they currently pay in Civic. For clients, there is free two-hour parking at the front of the building, and you have to bear in mind that the airport is only 10 minutes from the CBD.

Mr Deputy Speaker, the commercial development of Brindabella Park is not inconsistent with the Territory Plan as the Territory Plan has no jurisdiction on airport land. The plan which does affect the precinct is the National Capital Plan, and for members information the National Capital Plan nominates that the primary purpose of the area is airport-related activities, those that support air-related activities and some ancillary services.

The National Capital Plan was amended by amendment 30, published in September 2000, to reflect developments at the airport. Under clause 8 (iii), the amendment provides for "other uses". Included under the heading "other uses", is "office, provided that individual office buildings (other than offices associated with a primary use) shall not exceed 2,000 square metres in gross floor area".

The National Capital Authority has been involved in the development of the park, to the extent of including changes to the National Capital Plan to incorporate the intentions of the Canberra International Airport, as reflected in its airport master plan. There is no inconsistency with either the Territory Plan or the National Capital Plan as far as the National Capital Plan relates to the development at the airport.

Mr Deputy Speaker, the member refers to the principles of the Territory Plan. Sections 4 and 5, commercial development of the Territory Plan, includes the following principles and policies:

> Whilst maintenance of the planned hierarchy of centres is regarded as vital, the Plan also allows commercial development to respond, where appropriate, to emerging community needs and business trends. This includes recognition of the growing importance of the service, leisure and tourism areas.
>
> 4.1 An appropriate range of commercial activities will be encouraged at each level of the planned hierarchy of Civic, town, group and local centres, and in other selected locations.
>
> 4.3 Town centres or business parks will be the preferred location for major new office developments.
>
> 5.1 Industrial estates will be situated in locations accessible to suitable freight services and public transport, and where industrial activity is unlikely to have a significant adverse effect on the environment or the amenity of residential areas.

Mr Deputy Speaker, under the agreement between Canberra International Airport and the government, in a set of arrangements announced by the Chief Minister on 19 February, the ACT and the airport have worked together to pursue a number of shared goals. These include:

- developing the airport as an integrated transport hub;
- developing a joint business attraction program which recognises the unique business attributes of an airport location;
- working with the ACT to achieve high levels of defence business;
- the pursuit of a supportive planning environment within the metropolitan, sub-regional and regional context which will encourage certainty and long-term planning stability in the development of the airport; and
- developing a framework to facilitate the timely and appropriate provision of infrastructure.

The government and Canberra International Airport are working together to achieve the development of a fundamentally important piece of infrastructure which will undoubtedly contribute to the ongoing development of Canberra as a growing business environment.

Mr Deputy Speaker, paragraph 2 (c) of Ms Tucker's motion questions a possible failure of the corporation's board to comply with the disclosure of interest provisions of its act. Let me describe the facts as I have been advised. The lease is being negotiated with Canberra International Airport Pty Ltd. Mr James Service is not associated with this company and does not hold any interests in it. His father, Mr Jim Service, is not associated with this company either and holds no interest in it. One CTEC board member, Mr Stephen Byron, is a director of the Canberra International Airport Pty Ltd. Having disclosed his interests, Mr Byron was not involved in any way during the lease negotiation process.

Mr Jim Service—father of James Service—is a director of a separate company, the Capital Airport Group which manages the actual airport. Both Mr Jim Service and Mr Terry Snow have declared that Capital Airport Group has no involvement in the Brindabella Business Park development. Canberra International Airport Pty Ltd and Capital Airport Group are both companies held by Capital Property Corporation Pty Ltd.

Neither James Service nor Mr Jim Service is a director of the Capital Property Corporation Pty Ltd, nor do they hold any direct or indirect interests. The interests in that company are solely held by the Snow family.

Let us address the relationship between CTEC's chairman, Mr James Service, and the lease by CTEC of office space at Brindabella Business Park. Section 15 of CTEC's act relates to a personal or pecuniary interest, real rather than theoretical. The real question for the purpose of section 15 is: "Does James Service stand to gain any personal or pecuniary benefit, directly or indirectly, from the negotiation of this lease?" The answer is clearly no. Mr James Service has nothing to gain directly or indirectly from the decision of CTEC to enter a lease with Canberra International Airport Pty Ltd. As CTEC's chairman and a director of other boards in Canberra, James Service's interests are well documented and known to the government. I am advised that there was no interest which Mr James Service was obliged by section 15 of the act to disclose in relation to CTEC's lease of offices at the Brindabella Business Park.

If members of the Assembly believe that referring this matter to the Auditor-General is necessary, I have absolutely no problem with that, nor does CTEC. The corporation has taken great care to conduct the process correctly. There is nothing to hide.

In conclusion, I would like to repeat a statement made by Mr Jim Service, an experienced chair and member of a number of boards and our respected Canberran of the Year. He said:

> 1. My son is Chairman of CTEC.
> 2. I am a director of Capital Airport Group—but not a shareholder.
> 3. Capital Airport Group is responsible for the management of the airport. It is not a developer of Brindabella Industrial Park. Capital Airport Group simply ensures that the airport meets the requirements of the airport master plan.
> 4. The development is being undertaken by a company representing Snow family investments. I am not a director of that company, do not have any financial interests in it and am not privy to its affairs. The same applies to my son and all our family interests.
> 5. Beyond what has been made public, I know nothing about any CTEC negotiations. Neither I or my son or any of our family interests have any financial interest in the outcome of any such negotiations.
> 6. Kerrie Tucker could have had all this information by a simple telephone call.

Let us return to the bigger picture, Mr Deputy Speaker. CTEC, at the end of the day, is a tourism body that also runs events with tourism benefits and I believe that they, and the local tourism industry, are doing a very good job. Their focus on boosting year-round visitation is starting to pay off. Overnight visitors to the ACT have increased 20 per cent in defiance of a national 2.5 per cent decline. The average length of stay is now 3.2 nights. These additional tourists spend $170 million, adding $139 million to gross state product. That spending created 2,300 new jobs in tourism and about 880 jobs in related industries. The extra revenue generated from taxes related to this activity, excluding payroll tax, is in the order of $5.8 million, and that pays for many services in our community, ranging from schools to health and police.

Let us be honest here. This is not really about probity because, as I have explained, that is all above board. This is about personalities and the fact that some people in this place are threatened by the success of certain people in our community, successful both in a business sense and a philanthropic sense. So, yet again, the Assembly is playing politics by tearing down an organisation and all its public servants by alleging that they cannot be trusted to do the right thing.

I want to put on the record that the CTEC staff and board do a great job in promoting Canberra and the facts that I have just mentioned highlight that. CTEC is doing the job asked of them. Their lease is almost up and they need affordable office space that suits their operations and provides a healthy, safe environment for their staff. They have conducted a proper process to identify suitable accommodation that meets their needs. They have negotiated a very good deal that is very favourable to the ACT ratepayer. There is no conflict of interest in this. Let them just get on with their job.

MR BERRY (4.32): I move:

> Paragraph (1), line 1, after "Minister for Business, Tourism and the Arts" insert the words "for misleading the Assembly and".

I will come back to the amendment in a moment. I will firstly deal with some of the issues that have been raised in the course of debate in relation to this matter. I make no comment about the legalities or otherwise of what has been going on between all of these companies but I am interested in the issue of conflict of interest. I am not interested in damaging any of these companies, but I am interested in drawing attention to a very strong question of the competence of this minister in relation to the management of this affair.

We know, for example, that this minister was briefed in relation to this matter. We do not know what the minister said. We do not know whether there were any directions—I assume that there were none; no written ones anyway. We do not know the detail of the comment between the minister and the CTEC board chairman. I suspect that we will never know because it probably was not written down anywhere. But I suspect from my experience of these matters that the minister's approval would have been required before CTEC moved to Canberra Airport, or at least there would have been a conversation between the chair of the board and the minister with the chair saying, "Well minister, we are going out there. If you have any objections let us know."

This goes to the issue of competence. Notwithstanding what CTEC thinks, if the minister has not raised questions about the issue of a major instrument of government policy shifting from the centre of the city, where it deals with tourism and events, out to the airport then I think there is a question about his competence . That is not the subject of any censure motion in the Assembly but, on further examination, there may well be a case for that course to be followed.

The other issue I want to deal with is conflict of interest. I hear people around the place saying there is no conflict of interest. Well, the common test for conflict of interest is the issue of perception determined by the ordinary man in the street. Let me paint you a picture. The situation is a bit like Canberra's version of the *Brady Bunch*, with two blended families involved in all of these companies. Whatever occurs within those

companies is not the subject of much interest. But what I am trying to draw attention to is the perception.

As I said, a common test of conflict of interest is the perception of the ordinary man in the street. We have two families involved in several companies and involved in the transfer of CTEC to the airport. We have one family involved in the Capital Airports Group and Brindabella Park by a range of connections. We have another family involved in the board of CTEC and the board of the Capital Airport Group, all respected businessmen around the ACT. Another business interest of the family members has moved to the Canberra Airport.

So we have one family involved in one government instrumentality and in the Capital Airport Group. That same family is involved in another company, which has moved its business to Brindabella Park, and one arm of that family is involved in CTEC, which has moved to Brindabella Park as well. And they claim that there could be no perception of conflict of interest.

I have listened to Kerrie Tucker and I have listened to the minister. I saw Mr Service's letter in the paper. I know that I have been invited to Brindabella Park to see the new establishment of Mr Service, JG Service and Company, out at Brindabella Park. That was not mentioned in the letter. That is not a criticism; it should not be seen as a criticism of Mr Service. I have raised this matter merely to paint a picture from which the ordinary person in the street could easily draw the conclusion that there is conflict of interest. That is the test and I think the test is satisfied. If the ordinary person in the street could draw the conclusion that there is a conflict of interest then I think that satisfies the test. Mr Humphries, as Attorney-General, knows that I am on the ball there.

Mr Humphries: I am not Attorney-General, I am sorry.

MR BERRY: Well, the past Attorney-General. The new Attorney-General would know about that test as well. It is an issue of perception. Those opposite can deny it all they like but it is an issue of perception.

Mr Deputy Speaker, I think we have a real problem if the minister allows a government instrumentality to be involved in something where it is fair to conclude that there is a conflict if interest on the basis of the connections. It is a problem for the ordinary taxpayer out there who, I think, could come to the reasonable conclusion that there is a conflict of interest, notwithstanding anything that has been said in their defence.

I repeat that I make no comment about the legality or otherwise of what people have done. I am talking about perceptions. I am disappointed it has come to this because I think the reputations of some people may well be smeared as a result of this debate. But there were plenty of opportunities to resolve this before we got to this point. The opportunity has not been taken and we, as members of this Legislative Assembly, are entitled to draw conclusions about the behaviour of our executive arm of government and the interactions with the private sector. So, Mr Deputy Speaker, I think the case has been made on that score.

There are a range of other concerns which I think are adequately addressed in Ms Tucker's motion. I am certainly satisfied that this matter ought to go off to the Auditor-General. I bet there was not a democratic vote in respect of the part of the motion that expresses concern about access for clients and staff of the corporation. I wonder if Mr Moore insisted that they have a democratic vote first. I bet he did not.

The motion also talks about support for commercial development in a location which is contrary to principles of the Territory Plan. I hear on the tom-toms that the National Capital Authority will not hand over any documents in relation to this matter. This is just another demonstration to me that there has been a bit of a cook-up and that something has again been kept from the people of the ACT by the National Capital Authority. There is no interest in the Territory Plan. All they have is some hidden interest, which I doubt that we will ever discover.

I will now get to the nub of my amendment. It is clear to me that this Assembly was deliberately misled in relation to these documents. This minister came into this place and boasted:

> This should be open to some transparency, but it has to be appropriate. What we need to do is make sure that people understand the details that they put forward are protected where it is appropriate, and that details put forward that should be out there should be seen by all. The government does not have a problem with the motion now—

that is the motion, as amended, calling for presentation of the papers—

> and I thank members for the guarantees that they will protect the commercial-in-confidence detail that will be in these documents.

So initially the minister said, "This will be in the documents. All the information will be there for you to see." Mr Smyth apparently then discovered that, whilst he had given that undertaking, this had not occurred. It appears that somewhere in CTEC a decision had been made to deliver the documents in a form which was not the form required by the Assembly. The minister then came back into the Assembly and said:

> 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 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.

(*Extension of time granted.*) So twice Mr Smyth said, "You are getting the documents. They are on their way. The first set did not arrive as you directed and I have moved to fix that."

Mr Smyth then wrote a letter on 14 March. Mind you, there is no apology at all in this letter for misleading by saying that the documents were going to be produced. The minister referred to the motion passed by the Assembly on 28 February. Ms Tucker has referred to the second paragraph of the letter and some other commentary. In the last paragraph of the letter, the minister stated:

> To overcome the non disclosure of sensitive information at this stage, Mr Peter Stainlay, CEO, CTEC has advised me that he is available to brief Members on the relocation decision process.

That is not what we asked for. We asked for the papers. We did not ask for a briefing. We do not want any briefing from the CEO—we want to see the papers. You said we could see the papers. You said it twice. Not once have you apologised or come back into the place and say, "I misled you." You have had plenty of opportunities. Not once did you apologise to members by way of a letter to them saying, "I am sorry, I have misled you, I cannot now do that and I will explain later or offer some explanation." We have had two days of Assembly sittings, and not once have you apologised for misleading this Assembly.

Mr Deputy Speaker, the tradition in this Assembly if one is caught out and wants to repair the situation, is to apologise at the first opportunity. Certainly you could draw the conclusion that it was never the intention of the government, certainly never the intention of CTEC, to disclose the documents to this place.

The government was either part of this deal or was too weak to override the position which had been put to them by CTEC. Either way, this minister has misled this place and should be censured. In fact, there are plenty of instances on the record where ministers, and I am one of them, have been belted for alleged misleading and have lost their jobs—and one has recently left. Mr Deputy Speaker, this minister deserves to be censured by any measure. This has been a deliberately misleading performance by this minister from the beginning—there is no way of avoiding this conclusion.

When you have a look at the papers that were provided with the information excluded from them, you can easily draw the conclusion that the government is trying to cover things up. From my reading of the papers, there were 22 or 23 submissions—it is hard to be sure because there is some confusion about that issue.

I am especially interested in the special consideration that was given to Brindabella Park in those documents. There is no list of the short-listed people but there is mention of the special consideration given to Brindabella Park and how it was reviewed at one stage and later, in some way, somehow, included on the short list. We will never know how because the information has been blacked out.

For my part, the documents are useless because they do not have in them what this Assembly demanded. So this minister should be censured for refusing to supply the documents which this Assembly directed him to supply. But, most of all, he should be censured for misleading us. He twice said that we would get the information and we did not. He has not taken the opportunity to apologise on any occasion in the intervening

period by way of a letter. Neither has he taken the opportunity to apologise during a sitting of this place where he has had plenty of opportunity to do so.

Members, there is absolutely no doubt that we have been deliberately misled. This misleading has been deliberately constructed to make sure that this government avoids scrutiny in relation to this matter. This minister deserves to be censured.

MR KAINE (4.47): Mr Deputy Speaker, I must say that the fact that this matter has reached the point of there being a motion of censure against the minister does demonstrate some unwillingness on his part to do the right thing and be accountable. If he had done so we would not be considering this motion now.

When the minister was on his feet I was waiting for him to explain why it was that he was here defending a censure motion today. But he did not do so. He went on the attack. He did not choose to defend his position whatsoever. So I think it really is a question of whether the minister has acted responsibly in connection with some events precipitated by an organisation which is a creature of government and which, according to the machinery of government, is responsible to him and over which, therefore, he does exercise some control. From what has been said so far, I think there are still big gaps in that question. I am still somewhat confused about the whole situation.

I want to deal with a couple of matters that have arisen from the debate already. I think the minister's responsibility to this place and to the community lies in the question of his responsibility to implement the Territory Plan. As has already been spelt out, the Territory Plan is clearly specified in terms of the interests of this community—not in the interests of the commercial operation known as Canberra International Airport, not in terms of the National Capital Authority's interests, but in terms of the interests of the people of Canberra.

When the minister said earlier, "Well, you know, Brindabella Park is not part of my responsibility—that is the National Capital Authority's responsibility," in my view he immediately abdicated his responsibility. According to the Territory Plan, if CTEC as a government organisation were going to move anywhere, it should have moved to a place specified within the Territory Plan as a place where that sort of business activity should be conducted. The minister should have not permitted the board to decide that "we are going to go to the airport". The responsibility for that rests with the National Capital Authority and the management board of the airport, not with the government of the ACT and not with the minister.

So I am a little confused as to why the minister did not say to the board "that is outside of your consideration" and given them a direction, which he is entitled to do under the law, to cease considering a move to that place. I would have thought he would have done that. But he has abdicated his responsibility to the community by allowing them to move there in the first place.

The second matter that I want to deal with briefly is the question of commercial-in-confidence. I must say that I am totally confused about the government's attitude to this. At the beginning of this incident, the minister was quite open. He said, "Yes, I will put the papers on the table." Indeed, he did say that twice and I am sure this is recorded in the *Hansard*.

Later he was struck with the notion that perhaps he could not do that. What happened that made him change his mind? The only conclusion that you can come to is that he was heavied by somebody. Who might have heavied him to change his mind can only be conjecture, unless he comes clean and tells us what the sequence of events was and who it was that spoke to him and said, "Hey, minister, you got it wrong. We do not want you to do that." He did not mention the word "commercial-in-confidence" on the first two occasions he said he would put the documentation on the table. So something happened. To me, the fact that he changed his mind indicates that he initially decided to do the right thing by the community, to whom he is responsible, and then he changed his mind. He backed away from it. I would dearly love to know the reasons why he backed away.

Commercial-in-confidence has been a play thing of this government for some years now. Only within the last couple of weeks a member of the government wrote a letter to the *Canberra Times* that said the ACT government has abandoned commercial-in-confidence as a reason for not releasing information, that it is no longer a problem. I thought that was rather odd, because at the same time Mr Smyth was starting to say, "I can't put those documents on the table because they are commercial-in-confidence." So we had one member of the government saying that commercial-in-confidence is no longer a reason for withholding information as a matter of government policy and we had another minister saying he cannot do it because it is commercial-in-confidence.

I think the government needs to come clean and tell us just what the policy is now on commercial-in-confidence material. It needs to tell us when, if at all, a document ceases to be commercial-in-confidence and when it intends to release this sort of information. It has beaten its chest on a couple of occasions and said, "We abdicate from that former position and we are not going to hide behind the commercial-in-confidence anymore."

I must say that I am totally confused about the conflict of interest question. Ms Tucker put what I thought was fairly factual information on the table about the relationships between the various organisations and people who were clearly involved in the negotiations in getting CTEC to move out to Brindabella Park. The minister comes along and says, "No, you have got it all wrong. That is not right." One of the things he said repeatedly was that the Capital Airport Group is not involved in this. The question of whether or not there is a conflict of interest seems to hinge upon which particular organisation was negotiating with CTEC to make this move. Because of the people who sit on boards and the like, if it was one organisation then it could be argued there is no conflict of interest. If it was the other then you would have to say that, prima facie, there is a conflict of interest.

The minister kept saying that the Capital Airport Group was not involved in this, that anybody who could conceivably have a conflict of interest works for Capital Airport Group and therefore there is no conflict of interest. The minister did not explain, having made his overall statement, how it is then that the Capital Airport Group is the organisation mentioned in the papers that were sitting in the Clerk's office as the organisation with whom CTEC were negotiating. That is the first point.

Secondly, he has not explained how come he himself, in committee hearings, referred to Capital Airport Group as the group that was doing the negotiating on behalf of the airport. And he has not explained why the web site for Brindabella Business Park gives

the Capital Airport Group as the point of reference for information you might want to follow up.

We have three sets of facts which would indicate that the Capital Airport Group is involved in the management of Brindabella Park and was involved in the negotiations, and yet the minister says there is no conflict of interest because that organisation was not involved. He is going to have to explain the contradiction. Yet, on the face of it, it was and is involved. As I said before, that leads to the apprehension of the possibility of some conflict of interest. You cannot have it both ways: if they were involved, there is justification for such a perception; if they were not involved there clearly, in my view, could not be.

The minister says they are not involved, but that is contradictory to all of the evidence that has been before us for weeks. In order to change my mind about whether or not he has exercised his role properly as a minister in the interests of this community, both in terms of the original decision to move there in the first place and whether he has exercised his responsibility over CTEC and ensured that there was no possibility of conflict of interest, he is going to have to demonstrate positively and conclusively that Capital Airport Group was not involved and is not involved in the management of Brindabella Park. As I say, to do that he has to directly contradict what he himself has said previously and he has to contradict information put out by Brindabella Business Park itself. So I will be interested to see how he explains the anomaly.

MR STEFANIAK (Minister for Education and Attorney-General) (4.57): Mr Temporary Deputy Speaker, I am going to speak to only a couple of points. Perhaps the information I have will assist Mr Kaine. Indeed, if Mr Smyth speaks again, he might elaborate further. I think that the Assembly should look at this motion in a more considered way than the members opposite have done so far. They and Ms Tucker have claimed that the decision by my colleague Mr Smyth not to release the documents due to the commercial-in-confidence status of them was one of a secretive minister in a secretive government. I think that there is a fundamental flaw in their arguments.

Whilst I was not here during one of the classic incidents in terms of not releasing documents, I am well aware of it. As someone who has had a bit of experience in this place, I can certainly remember the track record of Labor in government, and it was pretty ordinary. I am going back a few years, but that was the case then. One example does sum up the situation. Whilst I was not here, I am well aware of what happened then. I refer, of course to the VITAB matter.

Mr Berry certainly suffered as a result of that. The then Liberal opposition pursued him for months for a copy of the VITAB contract and the related documents. I think that started back in 1993 and was not finalised until part-way through 1994. Basically, he would not give them to the opposition or to the Assembly; they were classified commercial-in-confidence.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): Order! The gentlemen on my left will come to order. Mr Corbell, come to order, sir.

MR STEFANIAK: I am not going to remind Mr Berry of things like saying that it stacks up and there is money in the bag. That is not the point. The point is that those documents were classified commercial-in-confidence. I wonder whether he would get away with it today, because the situation is a bit different today. Both Mr Osborne and Mr Moore put forward a Public Access to Government Contracts Bill 2000 and this government supported it. As a result, all ministers have to make all contracts over $50,000 available to the Assembly after finalisation. The key words there are "after finalisation".

My understanding is that this contract has not been finalised. After it has been, we will all be able to look at it and the ability to claim that the details are commercial-in-confidence will be subject to strict rules. I wonder whether the former Labor government would have agreed to support such legislation. On their track record, fat chance. Indeed, would a future Stanhope, Quinlan, Berry or whatever Labor government learn from the mistakes of the past? I doubt it very much. In fact, they might be a bit like the Bourbon monarchy in France after it was restored in 1815 following the fall of Napoleon. It was said that "they remembered everything and learnt nothing".

One of the key open-government reforms of this government was the introduction of the draft budget process. Again, members opposite have a real problem with that. That process makes the community and the Assembly aware of what the ACT budget will contain. It gives ordinary people and organisations in the community an opportunity to make a contribution. But what do those opposite intend to do with that draft budget process? They intend to abolish it. A future Labor government would have no time for open government. How can we have any confidence in those opposite if they are going to abolish something as basic, simple and open as a draft budget process? It is really a case of going back to the future.

This government has the best record on open and accountable government of any state or territory government, certainly of any government in the ACT's history. I will just cite a few of the facts. You might not like it, Jon, but—

MR TEMPORARY DEPUTY SPEAKER: Mr Stefaniak, address your remarks to the chair. I am sure that the Leader of the Opposition is interested in the matter before the chair.

MR STEFANIAK: I am sorry; I will address the chair. The Carnell government improved the approval rate for FOI applications from 67.7 per cent under those opposite to 90.3 per cent in 1998-99.

Mr Berry: I take a point of order, Mr Temporary Deputy Speaker. Will you ask the member speaking to direct his comments to the motion before the chamber?

MR TEMPORARY DEPUTY SPEAKER: There is no point of order.

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

MR STEFANIAK: Might I also say that my colleague Mr Humphries has abolished fees for FOI applications, going one step further.

Mr Humphries: That is open government.

MR STEFANIAK: It certainly is. We make available to the Assembly information that the former Labor government never would have provided. All ministers, including Mr Smyth, regularly table reports in the Assembly. We table documents showing the progress of capital works programs and we table the contracts of senior executives. We are prepared to provide relevant material to members of the Assembly and the public, wherever possible. On this occasion, it is clearly inappropriate to do so as the CTEC contract is still being finalised and the release of documents at this stage would jeopardise the negotiations. Accordingly, I feel that the censure motion clearly is inappropriate and I would urge members to vote against it.

MR WOOD (5.03): Mr Temporary Deputy Speaker, the relocation of CTEC to the airport was a strange move, taking an important body, one that is much concerned with what happens in the city, out of the centre of things. I want to comment in particular on one aspect of that, that is, the multicultural festival . It is quite clear that that festival could not work from the airport, it would not happen from the airport, as the festival is very much a hands-on affair.

I have become very much aware over the last few weeks of the work of the artistic director and of the volunteers in mounting that festival and keeping it going. It has been quite obvious to me, because my window looks out over Civic Square and I have seen Mr Mico supervising events there from early in the morning till late at night. I have seen the volunteers, one of whom is sitting in the gallery now, spending long hours in the square making sure that the festival goes on very well indeed. I have also seen the same people in various venues around the city. I do not know how Mr Mico and his volunteers could be so active from the airport. Mr Mico could walk from his office, go down the stairs and be at the centre of the activity. I am not aware of any festival events at the airport.

I should point out that the multicultural festival was not like the V8 rally, which was an event over two or three days—I am not sure which, because I did not go to it—in one location. In any event, it was run by a company, so the multicultural festival is quite different. It was about having many events in various locations over a fortnight. I am sure that CTEC did not understand what the festival was about. Just one example: there was comment somewhere or other that the embassies might have been helpful in providing some of the food stalls. In fact, the embassies have been a key part of the festival. They have provided enormous support to the festival.

Mr Humphries: Is this relevant to the motion?

MR WOOD: Indeed it is, Mr Humphries, even more relevant than what Mr Stefaniak was saying a minute ago. I think the evidence is there, especially with that misunderstanding about the embassies, that CTEC did not understand what the festival was about. That was at the core of the crisis between CTEC and the multicultural festival. Mr Mico said that it should not come under CTEC. He said what was pretty

obvious and what has been confirmed by recent events. For that criticism publicly he was sacked.

Mr Humphries: Not so.

MR WOOD: He was not sacked, according to Mr Humphries and the government. Okay, if you want it that way you can, but it does not seem that way to me. For some public criticism, well based and moderately expressed, he has gone. Are you satisfied with that? Will that do? He has gone. By whatever means, he has been kicked out. I was once minister for the arts and Mr Mico was an arts activist. He would come to me and lobby for various things. He was reliant on government funds for some of the things he was doing. Do you know what? Sometimes he made public comment about what I was doing and what should happen. He also made comment to me personally and wrote letters, because that is Mr Mico. He made public comment. What did I do when he made public comment? Did I go to the bureaucrats and say, "Cut him out"? No, I did not.

Mr Humphries: Mr Temporary Deputy Speaker, I take a point of order. I appreciate that this matter relates to CTEC, but the motion is about documents relating to the move of CTEC to the airport. I do not understand, with great respect, what the multicultural festival has to do with that, other than the difficulty of people being able to get there with respect to the festival. That much is relevant to this motion, but talk about the loss of Mr Mico is not relevant.

MR TEMPORARY DEPUTY SPEAKER: I have given Mr Wood latitude and I am sure that Mr Wood is now going to address the amendment and the motion.

MR WOOD: Indeed, and I would point Mr Humphries and you, sir, to paragraph (2) of the motion, which is about access to the clients and staff of the corporation.

MR TEMPORARY DEPUTY SPEAKER: I am aware of that.

MR WOOD: I would point your attention to Mr Berry's amendment about misleading information, and I am about to come to that.

MR TEMPORARY DEPUTY SPEAKER: I was intrigued as to where Mr Mico needed access.

MR WOOD: The motion has been framed so that I can speak about that. Isn't that the case, Ms Tucker?

Ms Tucker: Yes.

MR WOOD: Indeed. But I am about to move on and address Mr Berry's amendment.

MR DEPUTY SPEAKER: Do not grasp at straws, Mr Wood. Please address the issue before the chair.

MR WOOD: No, there is no straw here. In answer to a question yesterday, the minister said—

Ms Tucker: I take a point of order on that point, Mr Temporary Deputy Speaker. I just heard you say that you could not understand where the issue of Mr Mico having access came into this debate. I suggest that you have not been listening, because Mr Mico has responsibility for managing the festival and the whole issue of his ability to manage the festival would be put at risk if it were out at Brindabella Park, and that would be the same for future festivals, so it is entirely relevant to this motion; it is one of the key issues.

MR TEMPORARY DEPUTY SPEAKER: Mr Mico's contract, as I understand it, terminates on 30 June.

Ms Tucker: Oh, so that is why it is irrelevant. Great!

MR TEMPORARY DEPUTY SPEAKER: There is no point of order.

MR WOOD: I note that Mr Humphries did not take a point of order when Mr Stefaniak was a million miles off the track. But let me go on about misleading the Assembly. In answer to a question yesterday, Mr Smyth said that I should not assume that the festival will be coming out of CTEC. I will not accuse him of misleading the Assembly, although I think that is the case. Certainly, he has been obfuscating, because if he was not misleading the Assembly, he has left it very unclear. He is saying, "Do not assume that it will be coming out of CTEC." But yesterday the minister put out the following statement—

Mr Smyth: Where does it say that it will be coming out?

MR WOOD: It does not say that, but it is grossly misleading and would lead everybody who read it to believe that it would be.

Mr Smyth: No, you misunderstood it.

MR WOOD: No, I did not misunderstand it. Nobody I have met has misunderstood it. Let me read the headline to you, Mr Smyth: "New office to support all of Canberra's festivals". That is not misleading? I do not know what is if that is not misleading—"New office to support all of Canberra's festivals".

Mr Humphries: Mr Temporary Deputy Speaker—

MR WOOD: Read Mr Berry's amendment, Mr Humphries.

Mr Humphries: I have just read Mr Berry's amendment carefully. If Mr Berry's amendment is passed, it will have the effect of saying that the Assembly censures the Minister for Business, Tourism and the Arts for misleading the Assembly and for his refusal to obey an order of the Assembly, being an order to provide documents to the Clerk. The previous paragraph, to which I draw Mr Wood's attention, says, "In respect of the decision of the Canberra Tourism and Events Corporation to relocate to the Brindabella Park commercial centre." Let us assume that Mr Smyth has misled the Assembly with respect to the festival. That is not the subject of this motion, even as amended. The first paragraph of the motion says, "In respect of the decision to move to Brindabella Park."

Mr Stanhope: Speaking to the point of order: it is a very poor defence by the Chief Minister to say that just because Mr Wood can quite clearly demonstrate that the minister has misled on an associated and subsidiary matter does not mean that he misled in relation to the subject of the motion. I think it is quite relevant that Mr Wood can demonstrate clearly that Mr Smyth has a history of misleading. He does it all the time.

MR TEMPORARY DEPUTY SPEAKER: Order! It is not up to the Leader of the Opposition to make a determination; the chair will. I ask Mr Wood to address the amendment. I understand that you want an extension of time to do so, Mr Wood.

MR WOOD: Yes. I do not normally seek an extension of time but, because there have been so many interruptions, I ask for one now. *(Extension of time granted.)* The whole import of this media statement is that CTEC will be coming out. Let me go back to something that Mr Smyth said, Mr Humphries.

MR TEMPORARY DEPUTY SPEAKER: Mr Wood, address your remarks through the chair.

MR WOOD: Through you, sir, I will refer to something that Mr Smyth said to satisfy Mr Humphries' one-sided view of things. Mr Smyth was talking about the growth of tourism and visitation. CTEC was all about that and the multicultural festival was all about that, was it not? Whether it drew great numbers of visitors in the end, I do not know. But if we are going to focus on visitation, let us look not just at the impact of the move to the airport, but also the impact of the decisions that have been made about the multicultural festival .

I would think it is going to be very difficult next year to mount a festival anything like the one this year, again because of misunderstandings about how everything works. The embassies have been enormously supportive of the multicultural festival . They have provided a very large and expensive part of what has happened. I do not know whether the government can be confident that the embassies will be so cooperative next year. Mr Mico, the person who has been making all those contacts and expanding them over the years, has gone. Someone, I do not know whom it will be, will have to try to start again. I am not sure that the embassies are going to be very receptive to that. They might think that they can just put in a few food stalls and it will be okay. So there are big problems for next year.

The move to the airport and Mr Dominic Mico's removal have left the multicultural festival precariously situated. They have damaged the multicultural festival and damaged the cause of multiculturalism in the ACT. This decision has been an arbitrary, unpleasant, unnecessary one. It has outraged the multicultural community, the arts community and the wider community. We have seen only a little bit of evidence of that in the paper. By virtue of this media release, the minister is starting to try to claw back the situation. This release is an exit for him. I do not know who has been leaning on him, but somebody has.

I think we will find the next media statement three or four months down the track saying that the multicultural festival will stand on its own. That will be so that there will not be so much mud left on Mr Smyth's face, so that he can make a withdrawal in two stages

rather than in one. It certainly was a most remarkable media statement. The headline says one thing, but not even in the fine print is there a little worm of a movement for Mr Smyth to say, "I did not say that at all."

Let us look ahead. The festival has had a severe blow. Let us look at restoring its standing, let us look to see whether we can get some of these visitations up and let us see whether the festival can go on and on. For that to happen, it certainly needs the government publicly to acknowledge what I think it has privately conceded, that is, that more work needs to be done, that we need to backtrack and recover ourselves. Mr Mico has been dealt with most severely. I hope that the government is cognisant of that and is trying to work a situation through to give Mr Mico the support he needs and to give all those volunteers the support they need.

MR TEMPORARY DEPUTY SPEAKER: Mr Wood, I would ask you to come back to the amendment and the motion.

MR WOOD: Yes, indeed. I am talking about the visitation, and I look forward to strong rulings in relation to Mr Stefaniak in future. There is much more to be done. I hope that things will be recovered; but, in particular, I hope that there will be some support for Mr Mico from the government which owes so much to him.

MR RUGENDYKE (5.19): I have listened intently to this debate to see what I can latch onto to support some of this motion. I would like to put on the record that I believe that if Ms Tucker was fair dinkum about getting this motion up—Ms Tucker can speak for herself—she would have lobbied me, come and told me about it and discussed it with me. But no, she did not. It can only be described as a political stunt. But I have listened carefully just in case there is something that I can latch onto. What have we heard? We have heard about perceptions of conflict of interest. What does that mean? Is that what we have come down to? In deciding an issue as important as a motion of censure of a minister in this place have we come down to myth, rumour and perception? We have heard outrageous slurs on two families in this city. We have had outrageous slurs on the family of the Canberran of the Year, based on a perception that there is a conflict of interest. Goodness me, what are we coming to!

Mr Temporary Deputy Speaker, I did not look at the documents that the Assembly had the Clerk hold onto, but I did take up the briefing from Mr Stainlay, the CEO of CTEC. What did he tell me? He told me that about 22 or 23 buildings were analysed to see whether they would be appropriate for CTEC to reside in, given that the lease for CTEC's current accommodation is to run out in May. They need to go somewhere. I saw the shortlist of three or four. What did the documents show? They showed a little bit of black ink covering up the figures for the dollars per square metre. That did not worry me.

I am not an authority on rental accommodation. I do not know the difference between the three or four amounts per square metre for those three or four buildings. That did not concern me. But what else did the documents show? They showed that Brindabella Park was the best pick out of those three or four. I was satisfied with that. And guess what? It will save the taxpayer, I am told, about $60,000 a year in rent compared to where they are now. Isn't that a terrible thing! Isn't that a shocker! It will save the ACT taxpayer $60,000. And what about this myth that we need to catch buses to Brindabella Park.

Do we have to come down to the lowest common denominator? Don't people own cars? I think it was at the briefing that I heard someone say—

Mr Stanhope: There are 30,000 people living in poverty.

MR TEMPORARY DEPUTY SPEAKER: Order! The Leader of the Opposition will stop interjecting. Mr Rugendyke has the call. This debate is about a serious motion and an amendment thereto and we should treat it in that way..

MR RUGENDYKE: I think it was Mr Stainlay who told me that negotiations are being held for a bus service. I presume that that bus service would run from Civic to the airport or some such thing. But what happens to the people who have to come to the SAAP building now? They might come from Tuggeranong or Charnwood. What have they got to do? Do they have to find a car space here and pay five or 10 bucks for parking to visit CTEC? What would happen if they drove to Brindabella Park? Most of the people I know have a car. Some do not; some use a bus. But most people would be able to park out there for two hours for nothing. What a terrible deal for the people who have to visit CTEC!

There has also been some concern about people needing to go to the airport to have a meeting with CTEC. CTEC might dream up the idea of holding meetings for those people in the visitors centre on Northbourne Avenue. I think there are meeting rooms there. The upper floor is probably big enough to hold meetings. That might be a good idea for CTEC. That would solve the problems of the people who cannot get to the airport for a meeting. I am sure that CTEC would not mind. I am sure that CTEC does not have such a closed mind and would use its other premises to help people.

We are down to perceptions of a conflict of interest. I think that is quite terrible. I do not believe that this matter is deserving of a censure motion. I seek leave to amend the motion to remove paragraphs (1) and (2).

MR TEMPORARY DEPUTY SPEAKER: I understand, Mr Rugendyke, that you should foreshadow such an amendment. We have before us an amendment from Mr Berry. We will deal with that and then we will come back to you.

MR RUGENDYKE: Certainly. I foreshadow that I will be seeking to amend the motion by deleting paragraphs (1) and (2). Yes, I did find something to latch onto for support, that is, the proposal to allow the Auditor-General to analyse this issue. In the words of the son of the Canberran of the Year, Mr James Service, he will go along with any analysis, and the Auditor-General is the person to whom we should send it for analysis. The Auditor-General will have the capacity to get to the bottom of this issue without taking into account myth, rumour or perception.

MR OSBORNE (5.28): I think that we need to decide on a couple of issues here. The first is whether the actions of the minister warrant his censure. The second is the actual move of CTEC to the airport. I have to say on the second issue that I would have thought, speaking very much as a layman, that the place that you would want to be working best in this town is the airport and it is probably a wise move to be out there, but I am speaking purely as someone who is very much a non-expert on the issue.

I, too, have been a little concerned about some of the things that have been said about both Jim Service and James Service, although not directly. Certainly, the inference has been that there has been some conflict of interest there. I do not know either gentleman personally. Like most members, I have had a bit to do with both of them, more with James in the last couple of years but certainly with Jim in my first term here. I have to say that I have found both gentlemen to be very professional and very honest. I think it is unfortunate that they have been dragged through this issue. But, in saying that, I think some questions needed to be asked.

On the second issue, the most appropriate thing to happen would be for the Auditor-General to look at it, so I am quite prepared to support that. Given the information we have received today, I hope that there will be no problems. But we have said that before in this place and been surprised. I am a bit nervous because Ms Tucker is glaring at me.

Ms Tucker: I am not glaring.

MR OSBORNE: You are just staring; okay. On the first issue of whether the minister should be censured, I have to say that I am reluctant to agree, not necessarily because I agree with the actions of this government. I always find it interesting to have them reaffirm their position on openness and accountability and how they are quite happy to go along with FOI changes and things like that, but at the end of the day when push comes to shove they seem always to have this little hidey-hole of commercial-in-confidence to jump into.

Hopefully, one of the things that will come out of not just my legislation but, obviously, some of the things Mr Stanhope and Mr Moore have been saying is that finally we will be able to do something about the issue of commercial-in-confidence. I think it has been very clear over the years that it has been used as an excuse by government on both sides to hide behind.

The most glaring example for me was the hirers' contracts for Bruce Stadium that were released to the contracts committee which Mr Stanhope chaired and which I was on. I was staggered, absolutely staggered, at just how uncommercial-in-confidence, if there is such a phrase, they were. There was nothing in those documents, apart from perhaps embarrassing somebody, that I felt could be commercially sensitive for the Raiders, the Brumbies or the Cosmos, yet the fight we had to go through to get them was just disappointing. I know that Mr Stanhope has been through fights over obtaining information. I think we have all had an experience of that. I just hope that we will all learn from the Bruce Stadium issue; in particular, how the culture needs to change.

I think that the reality is that Mr Smyth has been working within that culture. As I said earlier, the government is not backward in coming forward about claiming that it is all for openness and accountability, yet we have situations like this which, more than anything else, frustrate members of the crossbench and the opposition because they have to go to such lengths to get information from the government. It is like extracting teeth and is very frustrating. The reality is that when parliaments request information governments have to provide that information. The classic example was Mr Egan, the New South Wales Treasurer, who was taken, I think, to the High Court and lost. The courts have reaffirmed the authority of a parliament to request documents.

I just hope that this government and the next government, whomever that may be, will have learned something from the events of the last couple of years. I do not intend to support the censure motion. I look forward to the Auditor-General's report on the move of CTEC to the airport. As I said earlier, I think it is probably a sensible move, given that we all want the airport to be the hub of tourism and get people in and out. Obviously, there are the other issues that we have heard about from other members. From my perspective, it has probably been a good move. I just want to reaffirm my disappointment at the way some people have been dragged through this matter. It is an unintended consequence, I suppose, but at the end of the day—

Mr Rugendyke: An intended consequence.

MR OSBORNE: Mr Rugendyke says that it is an intended consequence. I do not know that I would agree with that.

Mr Rugendyke: It is a deliberate slur.

MR OSBORNE: I do not know that that is true, either. All I can talk about is my dealings with these gentlemen, and I have always found them to be professional. As I said, I do not know them personally, but I imagine that they have not enjoyed the last couple of weeks. I look forward to the Auditor-General having a look at the nuts and bolts of the issue and reporting back to the Assembly.

MR STANHOPE (Leader of the Opposition) (5.35): The issue has been fairly well traversed. I have an inclination to take us back to taws and ask: how did this issue arise? How did it surface? How did it start? It started with Ms Tucker asking a question in this place of the minister about the reasons for the move. I do not have it before me, but, as I recall, the question Ms Tucker asked which was the catalyst for or precipitated the entire debate on this issue was: Minister, what are the reasons for the move by CTEC from the city to the airport and how have you dealt with the range of issues raised by the move, particularly the range of issues around accessibility? The minister gave an answer to that which many of us did not find particularly helpful and did not satisfy the issues.

The issue moved on and then Ms Tucker moved a motion which the Assembly—a majority of the members; therefore, the Assembly, this parliament—passed that the minister provide to the Clerk for inspection only by members all documents related to the decision of CTEC to relocate its offices to Canberra Airport, and the motion listed the range of documents that were to be provided in those circumstances, documents relating to tenders, consultants' reports, minutes of meetings, et cetera. They were to be provided by 1 March. That was agreed. The motion was passed. The question was put and passed. From memory, it was not even opposed by the government; it was agreed to and the motion was passed. Members then had an expectation that the documents pursuant to that motion would be provided. I think I am right in my memory that the government did not oppose the motion.

As Mr Berry has said, and perhaps Ms Tucker alluded to it as well, Mr Smyth came back to the Assembly after the passage of the motion and made certain statements about the provision of documents. Mr Berry read from *Hansard* the following words that Mr Smyth used in this place:

> … the Assembly asked yesterday—

that is, the day after the motion was passed—

> that documents from CTEC be put with the Clerk for members to view. That has been done … CTEC has prepared them in a way that documents to be released normally are.

I think that it is an interesting admission in itself that CTEC prepared them in a way that documents

normally would be released. The minister continued:

> They have taken the confidential data out of them, which is not in the spirit of what this place agreed.

Not only was it not in the spirit, but also it was not in accordance with the motion. It was not just a question of its not being in the spirit; it was not in accordance with the motion, either. The minister acknowledged that, saying:

> 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.

Not within the spirit of what was agreed, but in accordance with what was agreed by the Assembly, I think unanimously. I am prepared to be corrected on that, but I think that it was passed unanimously by the Assembly that the documents, as listed, be provided.

The minister came into this place the day after and said, "Look, Assembly colleagues, the documents asked for and agreed by each of us, all 17 of us, should be provided have been provided, but CTEC made a little mistake. CTEC did not look closely at the words of the motion and deleted sections from the documents that have been provided. I have asked for that to be fixed. I am prepared to accord with the motion that this parliament agreed to. CTEC misread the motion. It provided documents, but deleted sections. I have told CTEC that that is not good enough. I got onto the CEO and said, 'You have not complied with the motion. I want you to comply with the motion. That is why I am here speaking to you.' Fellow members, we are going to ensure that the motion is agreed with. I have given instructions to CTEC that they are to comply with the words of the motion." The minister came in and said that, and he apologised. He apologised that CTEC had provided the wrong documents. He said, "I apologise to members that CTEC has provided you with a set of documents that did not comply with the motion." That was said on 1 March.

Despite having come in here and acknowledged that CTEC had made a mistake, acknowledged that CTEC had provided a set of documents that did not conform with the motion, apologised for CTEC's mistake and suggested through the statement that he made in here that he had directed CTEC to comply with the motion that the Assembly passed and, as I say, I believe passed unanimously, the minister wrote to us on 14 March, saying, "I am writing to inform you that we are not going to comply with the motion passed by the Assembly." That is what the letter of 14 March says.

The minister said on 1 March , "The Assembly passed a motion"—I am saying now that I think that it was passed unanimously—"and I have actually come into the Assembly to apologise that CTEC mucked it up and did not comply with the terms of the motion.

I apologise, members. I am going to get that fixed; I am the minister. CTEC will do what the parliament demands. I will fix it." Two weeks later, he said, "Dear members, get stuffed," and that was it. We are here today to censure the minister for misleading the Assembly in the wilful and deliberate way that obviously he has.

When he spoke to us on 1 March and apologised for the fact that CTEC had not complied with the direction, did he intend at that stage that they comply with the direction? Was there a wilful misleading or at that stage had he genuinely directed CTEC? Did somebody at CTEC say, "Oh, no, Minister, you have got it wrong. We are not doing that, Minister. You might have promised the Assembly, you might have come back into the Assembly and made a statement, but we are not doing that, Minister. We decide what gets tabled. We decide what the members of the Assembly will see?" Is that what happened? Who made the decision?

MR TEMPORARY DEPUTY SPEAKER: Order! The Leader of the Opposition will address the chair. This is a serious matter. Address the chair. Do not bait the government. Talk to the chair.

MR STANHOPE: I beg your pardon, Mr Temporary Deputy Speaker!

Mr Kaine: He was addressing you, I thought.

MR TEMPORARY DEPUTY SPEAKER: I stand corrected.

MR STANHOPE: I take a point of order. I take serious exception to that interjection by you, Mr Temporary Deputy Speaker. It was completely out of order and completely uncalled for.

MR TEMPORARY DEPUTY SPEAKER: I apologise to the Leader of the Opposition.

MR STANHOPE: I cannot believe that. Are you worried about your seat in Ginninderra, Mr Temporary Deputy Speaker?

MR TEMPORARY DEPUTY SPEAKER: The Leader of the Opposition will address the chair on the matter before it. I thank you for your concern for my wellbeing in the political arena.

MR STANHOPE: I have noticed the campaign that is being run against you. That is the situation we have here and that is the crux issue. It is quite clear that the minister has misled the Assembly and he should be censured for doing so. He has never sought to explain. He has not apologised for the fact that he has gone back on his word. He has not sought at any stage to explain or apologise for reneging on the statements he made in this place. That deals with the first point.

I want to touch very briefly on the issue of conflict of interest. I say as a bit of an aside in a way that I share some of the concerns that have been expressed by members all round this place about the need not to injure anybody's reputation by speaking loosely and making all sorts of innuendoes or overt suggestions. I am not going to do that. I have no reason to believe, and do not believe, that anybody who has been associated with this issue has acted in other than the most professional way and with utmost propriety at all

stages. That is not being suggested by anybody. It is not a suggestion that is being made. I am not making it and I know of nobody in here that is making it.

Mr Rugendyke did make great play of people's concerns about a perception of a conflict of interest. Mr Rugendyke thought that was irrelevant. Mr Rugendyke did not go on to say whether he thought there was a perception of a conflict of interest; but that is another issue. It is in the context of the extent to which this issue has been raised and pursued that a whole range of other issues have now arisen. I will deal with a couple of them quickly. One is the point that Ms Tucker made in her speech, and I will just repeat it.

Ms Tucker asked whether the minister would confirm that all documents related to this issue that are relevant to the motion have been provided to the Clerk. *(Extension of time granted.)* Ms Tucker actually referred to a single document. She asked whether the minister would give an assurance that all documents relevant to the motion were provided to the Clerk and referred to one document in particular—the document required under section 15 or 16 of the CTEC act in relation to anybody who may have declared a conflict of interest. It is now quite relevant for each of us to know that. Ms Tucker asked for it to be tabled if it had not been provided and I think that it would be good if the minister could respond to that. If it has not been tabled, I hope that he has arranged for CTEC to bring it in here so that it can be tabled before close of business today.

I would like to refer just briefly to the Minter Ellison letter. I think it is ironic in the context of debates about conflicts of interest that we actually ask to be advised whether those that provided the Minter Ellison opinion may have declared their relationship with CTEC or the government. I would be interest to know whether Minter Ellison are CTEC's lawyers.

Mr Smyth: They are.

MR STANHOPE: They are. So Minter Ellison are permanently briefed by CTEC.

Mr Humphries: So what?

MR STANHOPE: I think it is relevant to know the relationship.

Mr Humphries: They are their lawyers. Of course they are giving them advice.

MR STANHOPE: That is right. So we are dealing with CTEC's lawyers here. So CTEC went to their lawyers.

Mr Humphries: Yes, and asked for advice.

MR STANHOPE: I am just asking about that. What is the relationship between Minter Ellison and CTEC or the relationship between Minter Ellison and the government? How much work does the government send Minter Ellison's way? Those are interesting issues in the context of conflicts of interest and the extent to which we can rely on this sort of advice.

Mr Humphries: I take a point of order, Mr Speaker.

MR SPEAKER: Order! One moment, Mr Stanhope.

MR STANHOPE: Why didn't this advice come from the ACT Solicitor?

MR SPEAKER: Mr Stanhope!

Mr Humphries: Because they are not CTEC's solicitors, that is why. Mr Stanhope made a fairly serious allegation by innuendo just a moment ago.

MR SPEAKER: Yes, I agree.

Mr Humphries: He is reflecting particularly on two people, the people who have written this advice. Mr Speaker, one of those people is a former president of the Law Society of the ACT, a distinguished lawyer in Canberra. Both of them, as far as I am aware, are highly regarded lawyers in the ACT. To suggest that they have written an advice because of some relationship with the government is outrageous and I ask Mr Stanhope to withdraw it.

MR SPEAKER: I think it would be an idea, Mr Stanhope.

MR STANHOPE: I was making no such allegation by innuendo, Mr Speaker.

Mr Humphries: What were you saying about it, then?

MR STANHOPE: If I am allowed to continue, and I will, I was completely misrepresented by what the Chief Minister said. I was making no allegation by innuendo.

MR SPEAKER: Thank you.

Mr Humphries: What are you saying about it, then?

MR STANHOPE: If you will let me finish, I will tell you. If you will just stay in your seat for a little while and let me conclude what I was saying, I will. What I was saying, and it is an issue that has been of concern to me for some time, was about the nature or the basis on which the government contracts out for legal advice. I think this is a very live issue. It is something that I have a major concern about. It is an issue I have raised over the last few years. I refer to the basis on which the government contracts out for legal advice. You know that one of the major areas of outsourcing that has occurred over the last few years has been the outsourcing of legal advice. This is the sort of advice that, until a few years ago, was always provided by a government solicitor.

I am making, I think, a very valid point and I will continue to make it. It is a point that I have been making for years. We have a right in these circumstances to ask: is the most appropriate way for a government to be advised by private practitioners? This is a firm of commercial lawyers. This is a firm of lawyers whose major clients in town are commercial entities and it is giving advice on commercial practices.

I would be much more comfortable, without impugning anybody's reputation or honour, if this advice had been provided by an ACT government solicitor. I could go out and get another advising on conflicts of interests and perceptions of conflicts of interest that,

I guarantee you, would conflict with this one. I am making a suggestion, a valid point. If you table legal advice in this place and expect us to accept it as gospel, I think that it is relevant to know the nature of the relationship of the principals or of the company. How much work do Minter Ellison get from the ACT government? They get a lot. They have done a fair bit of other work. They have actually represented members of the government, have they not?

I am not impugning the reputation of the two gentlemen who provided the advice, not at all, but I am entitled to ask whether they have been appointed by this government to any board. Is Russell Miller or Neal Parkinson on any board? Have they ever served on CTEC? Have they ever served on any other government board or instrumentality? It would be interesting to know that. That is the point I am making.

Mr Osborne: What were those names again?

MR STANHOPE: Russell Miller and Neal Parkinson. I do not know them, but I think that it is relevant to ask whether these characters have been appointed to boards at any particular stage.

MR SPEAKER: The member's time has expired.

MR STANHOPE: So there is an issue there around conflict of interest.

MR SPEAKER: I said that the member's time has expired. Would you like an extension?

MR STANHOPE: Just a short one. I just want to make a point. No, I will not.

Ms Tucker: I take a point of order, Mr Speaker. I draw your attention to standing order 55 and ask for Mr Rugendyke to withdraw his comment about my intention to slur the people involved in this discussion. I would not normally respond to Mr Rugendyke's interjections as I do not think it is worth the energy, but Mr Osborne did pick up the comment and repeat it in this place. I would like Mr Rugendyke to withdraw that. If Mr Rugendyke is not aware of it, the standing order says that all imputations of improper motives and all personal reflections on members shall be considered highly disorderly.

MR SPEAKER: I was not in the chair at the time, as you would be aware.

Mr Rugendyke: I certainly withdraw those words without reservation.

MR SPEAKER: Thank you.

Mr Osborne: Mr Speaker, just responding to Ms Tucker: when I did draw the Assembly's attention to what Mr Rugendyke had said, I said that I did not necessarily agree.

Ms Tucker: Yes, I know that you did, but it is on the record that he said it. That is why I had to respond.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (5.52): I was going to ask one of my staff to calculate what number this censure motion was in the long procession of censure motions that we have had in this place. The rough guess was that there have been about 12 or 13 since 1995, but I am open to correction on that.

I have to say that it has been one of the drearier and less passionate motions of censure I have seen for a while. I am not really surprised, given the way in which members have roamed over all sorts of issues in this matter as if they have been trying to find something to pin on the Minister for Business, Tourism and the Arts. Mr Wood digressed to the removal or departure of Mr Mico from CTEC, which is not part of the motion as far as I can tell. We have had comments about the operation of CTEC. We have had issues of all sorts raised in the context of this matter. I have to say that none of them has been particularly convincing.

Mr Berry described this whole affair as a bit of a cook-up. In support of that, he said that he assumed that there had been no written direction to CTEC and then there was strong innuendo that perhaps there was some other direction to CTEC, some oral or verbal direction, which we do not know about.

Mr Berry: We will never know.

MR HUMPHRIES: Yes, they were the words used. We have here a motion of censure, a very serious matter, being moved about a minister on the basis that certain things are being alleged of which there is no substance or proof. We have a censure motion being moved on the basis that there might have been an oral direction, but we do not really know. No evidence has been suggested or brought forward to support that. It has been put in evidence in the course of the debate on this motion—

Mr Berry: But he misled the Assembly; that is the point I made.

MR HUMPHRIES: In that respect, he advises me—he can speak for himself if he wants to later—that there was no communication between CTEC and the government before CTEC made a decision about moving to Brindabella Park at the airport, that the only thing that was conveyed was a conversation from the chairman of CTEC to advise that a decision had been made by the CTEC board to make that move. There was no request to the minister to confirm, support or assess the decision because, quite properly, it was CTEC's decision. We do not require authorities of that kind to come back and confirm such decisions with the government. It is their job to make those decisions. So the sly slur that there must have been an oral direction somewhere, but we will never know is, frankly, the kind of thing that we have to contend with in this motion.

The motion expresses concern regarding a whole series of things. First of all, it refers to access for clients and staff of the corporation. If I am dealing with CTEC and work outside the city centre and if, like most citizens of this city, I get from place to place in a car, I may find it a great deal easier to deal with the corporation at the airport than to find a parking space in town and try to find my way to the offices of CTEC, so to criticise them on the basis of a lack of access is something of a nonsense.

Then we have an expression of concern in the motion regarding support for commercial development in a location which is contrary to the principles of the Territory Plan. For goodness sake, the Territory Plan does not govern the land around the airport; the National Capital Plan does. This land, as far as I can tell, is entirely within the terms of the National Capital Plan. What is the point of referring to the Territory Plan? You might as well point out that it breaches the Code Napoleon. What is the relevance of it to this particular application?

The third ground for this motion is that it expresses concern regarding "the possible failure"—not just the failure, but the possible failure; the lack of confidence in the grounds for this motion is expressed in the terms of the motion—"of the Corporation's Board to comply clearly with the requirements of clause 15"—I assume Ms Tucker means section 15—"of the Canberra Tourism and Events Corporation Act 1997 'Disclosure of Interest'".

In answer to that, an opinion has been tabled from one of the most respected firms of lawyers in Canberra. I do not know Mr Parkinson very well—in fact, I do not know him at all—but one of the two lawyers here is highly regarded in the ACT scene. I am sorry, what Mr Stanhope said was an inference that the positions that these lawyers hold elsewhere in government might cause them to give different advice from the one they would give if they were not in those positions. That was the clear inference of what Mr Stanhope was saying, whether he cares to admit it or not.

I have to say very clearly on the record that Mr Miller, whom I know, is a highly distinguished lawyer in this town, a former president of the Law Society and the author of a large number of books—in fact, the leading Australian author on trade practices in this country; not just in Canberra, but in the whole country. The slur on them from Mr Stanhope was quite unacceptable.

But even if you put that to one side in some way, we have a motion that refers to a possible failure to meet the requirements of section 15 of the act and clear advice to the board that there was no breach of section 15 of the act. Mr Stanhope says, "I could produce, I am sure, advice to the contrary on this," but he has not done so. He has not produced contrary advice, yet he says, "Throw away Mr Miller's advice. I might be able to get advice which is better if I went off and looked for it, but I have not done so." For goodness sake, Mr Speaker: is this the Legislative Assembly for the ACT or a latter day version of the Star Chamber? Where is the evidence? Where is the advice? I have to say, Mr Speaker, that this is very unfortunate.

Mr Berry says that Mr Smyth should be censured because he has misled the house, because Mr Smyth told the house that he was going to do something in the future and did not do it. I might point out at this point that motions of censure in the past on misleading the house, all that I can recall in this place, have relied on something which has happened in the past on which a minister has reported, supposedly inaccurately, to the house.

This is a new creature. This is where a minister says that he is going to do something in the future and is accused of misleading the house because he does not, in fact, do that in the future. That is very dangerous ground to be getting into because, Mr Speaker, there are all sorts of reasons why what a person says they are going to do in the future might not be done. In this case, Mr Smyth has actually written to members explaining the

reason why he has not done what he said he proposed to do originally. It is not as if he has said that he will do something and then just sat back and sniggered and said, "Ha, ha, I fooled you all." He has written to us, every one of us, and told us why it is that he believes he cannot complete the course of action which he foreshadowed in the house. Is that kind of up-front approach to this issue a basis for censuring a minister? I would suggest that it is not.

Mr Speaker, to answer the other things that have been ranged over here, I think it is appropriate for the tourism corporation, which deals with visitors to the city, to be at the airport, which is where many visitors to the city come when they are arriving in the city. The question of a culture of commercial-in-confidence needing to change, which Mr Osborne raised, is a point well made. That is why this contract will be on the public record as soon as it is completed. But there is, of course, no contract yet. It is still being negotiated. When it is completed, it will be put on the table for public scrutiny. I might point out that members will see every clause of this contract in due course, but we are yet to see that very contentious contract which was much debated in this place, that is, the contract with VITAB Pty Ltd.

Mr Berry: Because the Assembly never asked for it.

MR HUMPHRIES: That is your excuse, Mr Berry. This is a very poor ground for attempting to censure the Minister for Business, Tourism and the Arts.

MR SPEAKER: Are you going to table something, Mr Humphries?

MR HUMPHRIES: Yes, I table the advice from Minter Ellison, Mr Speaker. I present the following paper:

> Canberra Tourism and Events Corporation—Member's disclosure of interest—Facsimile copy of advice from Minter Ellison to the Chief Executive, Canberra Tourism and Events Corporation, dated 23 March 2001.

Sitting suspended from 6.02 to 7.30 pm

Question put:

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

The Assembly voted—

Ayes 7		Noes 9	
Mr Berry	Ms Tucker	Mrs Burke	Mr Moore
Mr Corbell	Mr Wood	Mr Cornwell	Mr Osborne
Mr Hargreaves		Mr Hird	Mr Rugendyke
Mr Quinlan		Mr Humphries	Ms Smyth
Mr Stanhope		Mr Kaine	

Question so resolved in the negative.

MR RUGENDYKE (7.39): Mr Speaker, I seek leave to move two amendments together.

Leave granted.

MR RUGENDYKE: I move:

(1) Omit colon and paragraphs (1) and (2).
(2) Paragraph (3), omit the words "these concerns", substitute the words "this issue".

I do not need to say too much. I think it has been said here tonight and this afternoon. Some people seem to think there is a smell to do with this move. The smell seems to be more over that side of the chamber. Until those proposing this motion find the rat, I will not be supporting a motion based on myth, gossip or rumour. Mr Stanhope is trying to interject. I cannot hear him. Next year, if things are different, the bar will be just as high for such motions then. I urge you to support my amendments, which bring us back to some sort of sense.

Amendments agreed to.

MS TUCKER (7.42): I would like to wrap up in response to some of the comments that have been made during the debate. First of all, I will respond to some of the points from Mr Smyth, who responded in part to the motion. He talked about consistency with the Territory Plan. He read out sections of the Territory Plan that he thought supported his case that it was okay for the National Capital Plan to take precedence. He said that it was appropriate to have commercial development if a community need was becoming apparent for that development in places other than town centres.

I am quite fascinated that Mr Smyth did not respond to the points I raised regarding the oversupply of commercial space and the fact that his government is supporting a variation of use from commercial to residential because of what they call "low demand" for high-tech-based commercial land use at Fern Hill. There appears to be quite a contradiction in the government's position.

Mr Humphries also said that the move was totally appropriate because it was in the National Capital Plan. As Mr Humphries probably knows, the National Capital Plan was changed after privatisation of the airport, probably at the request of the owners of the airport. The government can deny that if it is not true. This government is undermining its own Territory Plan. That is quite clear and has not been refuted by the government.

Another point made by Mr Smyth was that we need a healthy working environment that suits the operations of CTEC. I think I made it quite clear through the points I put in my speech that there is absolutely no way we can be convinced that the needs of CTEC's operations are being met by this location, principally through the point in my motion about access and public transport.

We were interested to hear Mr Humphries and Mr Rugendyke both say that most people drive cars and that therefore we should be accommodating them. Mr Rugendyke said that we do not need to always go to the lowest common denominator. That must be people

who use buses. There was a person in the gallery when Mr Rugendyke said that. She is working consistently for migrant women in Canberra. She has also done a lot of work for the multicultural festival. She does not have a car. I can tell you, Mr Speaker, that she was not too impressed to hear Mr Rugendyke call her one of the lowest common denominator class.

Mr Smyth also said that somehow I am motivated by a desire to pull down successful people. Mr Rugendyke also suggested that, and I asked him to withdraw it. Mr Humphries also made a great deal of bringing people's names into disrepute. What concerns me about that argument is that it is once again about the person. I am sorry if people in public positions believe they are brought into disrepute. I regret that. But there is a fundamental point here that has to be acknowledged. These people are on boards of public corporations which are responsible for spending public money. This is not about the person.

This has come up in this place before. I can remember once I challenged the gambling commission, and Mr Rugendyke was outraged. He said, in this place, "Tony Curtis is my friend. Ms Tucker is being unkind, and she just wants to get my friend." I made the point then that I was interested in issues of gambling and I was talking about the gambling commission. When we had the debate on Mrs Carnell, I remember it came up as a very big issue. Our work is not about the person. Our work is about accountability of government. Our work is about scrutinising how government spends public money. Our work is about taking responsibility for ensuring that governance is carried out in an accountable way. Mr Service is on a board of a public corporation. We expect, therefore, the highest standards.

This place may be of the view that there may well be some questions about how process is operated. I am still waiting for Mr Smyth to table the document—I have not seen it—that shows that CTEC communicated to him in writing, as the legislation requires, that one person did stand down because he declared a conflict of interest. Where is that document? It was not in the Clerk's office. The legislation requires it. I have asked that it be tabled. I know that Mr Stainlay from CTEC is here, so I am sure he could get that document for this place. This place has requested that the minister table that. If it is not here, I am very interested to know why.

MR SPEAKER: Ms Tucker, whoever may be in the gallery is of no importance to the chamber.

MS TUCKER: I take your point. I apologise if that is not appropriate. Mr Kaine thinks it is important. Whatever, we know that the minister has support here. We know that his support is listening to the arguments, and we know that the minister has been asked by several members to make sure that that written briefing is given to us tonight. It has not been, which makes me wonder whether it exists. So there is another question there.

Mr Osborne said that he thinks it would be appropriate for the airport to be the centre for Tourism because it can be the hub of tourism. Mr James Service, before Ted Quinlan's committee, responded to my question on that. He said that it is the second biggest gateway to the city, and therefore there is a justification for having tourism there.

I do not have any problem with there being a shopfront there, but I was interested to hear the claim about the second biggest gateway, so I asked for the statistics. Members might be interested to know. In 1999, for visitors, air transport was 13 per cent, private vehicle was 79 per cent, other was 8 per cent. For international visitors, 13 per cent air transport, 87 per cent private vehicle and 0 per cent other. If we are seriously interested in how people get into this city, how many visitors come here and what the gateway is, it sure ain't the airport.

The other point I have to address is conflict of interest. Mr Rugendyke has said that there is innuendo, there is a perception, there is myth. I have not heard Mr Humphries, Mr Smyth or Mr Stefaniak address any of the points I raised in my speech, so I will go over them again quickly. We have legal advice which is based on the presumption—it is the key point of that legal advice—that Brindabella business park is owned and run by Canberra International Airport, not Capital Airport Group. However, from the all the documents we can access it is clear—not myth, Mr Rugendyke—that the business park is run by Capital Airport Group. It is clear that, for all intents and purposes, Canberra International Airport and Capital Airport Group operate as the one entity. In the documentation, it is claimed the airport was paid for by Capital Airport Group, which then built the business park.

CTEC's legal advice that there is no conflict of interest is obviously open to challenge. That is why I have moved this motion. I believe there is ample evidence to say that there are serious questions. The evidence does not support the premise of CTEC, the government or the legal advice. The legal advice did not deal with this. For that reason, I think it is really a clear case. I am very disappointed that members do not see the need to censure the minister. *(Extension of time granted.)*

I quoted to members Odgers and *House of Representatives Practice* on the importance of orders of a parliament. They are different from motions. I have not heard Mr Rugendyke, Mr Osborne, the government—anybody—answer that. There has been some discussion about Mr Berry's amendment and the fascinating and wonderful statement from Mr Humphries that it is a very dangerous precedent to suggest that we could apply the concept "to mislead" to a minister who says he or she will do something and does not. That is wonderful. If that is such a dangerous precedent, I would be fascinated to understand what that means. If that is so dangerous, does that mean that we can expect ministers to often commit to things and not do them? I guess that is what the implication is.

I have not heard any good arguments for not supporting this censure on the grounds of the contempt of this Assembly by this government in not obeying the order of the parliament. The arguments I put up have not been addressed. There have been some rather unpleasant comments. I think it would have been much better if people had addressed the points I raised. I am glad, however, that at least this issue is going to be referred to the Auditor-General, and I thank members for support for at least that part of the motion.

Motion, as amended, agreed to.

Proposed policies for residential development and proposed Code of Residential Development

MR CORBELL (7.54): I move:

> That this Assembly directs the ACT Government to not proceed with the release of the *Proposed Policies for Residential Development in the ACT* and the proposed *ACT Code of Residential Development* as a Draft Variation to the Territory Plan until:
>
> (a) further public consultation is undertaken on details of the proposed policies and code;
>
> (b) a Community Advisory Panel is established comprising resident, community, professional and business representatives to review and report on the proposed policies and code;
>
> (c) proposed appointments to the Community Advisory Panel are referred for the comment of the Standing Committee on Planning and Urban Services;
>
> (d) the Community Advisory Panel has presented its report to the Government;
>
> (e) the Government has responded to the Community Advisory Panels report and tabled its response in the Legislative Assembly;
>
> (f) the Government has provided further information to the Legislative Assembly on how the proposed policies and code will be implemented if the proposed policies and code are released as a Draft Variation to the Territory Plan and have 'interim effect'.

Mr Speaker, the government's proposal to release a draft variation to the Territory Plan to introduce a new code and policies for residential development will see the most significant draft variation to the Territory Plan since the introduction of the plan take effect from tomorrow. From tomorrow policies relating to plot ratio guidelines for multiunit redevelopment, including dual occupancy development, which propose a blanket plot ratio of 35 per cent for any block across Canberra will have legal effect. This proposed plot ratio will not include external hard surfaces such as driveways, footpaths, garages, tennis courts or swimming pools. In reality, the 35 per cent plot ratio control for multiunit and dual occupancy development will permit up to 50 per cent of the block to be covered in non-permeable surfaces.

From tomorrow single dwelling development will be exempted from the 35 per cent blanket plot ratio, and the new code will permit single dwellings to cover an unspecified percentage of the block. From tomorrow only a minimum of six metres of private open space will be required for dual occupancy and multiunit development. From tomorrow there will be no specific protection for suburbs of territorial significance identified by the Labor government in 1994. These are suburbs like Griffith, Yarralumla, Turner, O'Connor, Forrest, Narrabundah and Red Hill. From tomorrow the new code will permit development proponents to provide effective groundwater implementation of stormwater and other sustainability measures only where they say it is practicable. It is not mandatory.

Of even more significant concern is the provision for a section master planning process. From tomorrow, if this draft variation is given effect to, a development proponent will be able to produce a section master plan for any multiunit or dual occupancy proposal in

any suburb in Canberra, on any block in Canberra. The section master plan process will permit the developer to exceed the plot ratio control set out in the code, permitting development on up to 50 per cent of any block. Any other provision of the code can also be exceeded or ignored if such proposals are in an approved section master plan.

There is no appeal against the approval of such a master plan. There is no right of review. The section master plan, once approved by the minister, will become the planning control for your local street, your suburb, your neighbourhood, and it is entirely within the control of the minister, without any appeal. This is an unprecedented and unfettered increase in the powers of the minister. From tomorrow the minister alone can determine what sort of redevelopment occurs in your suburb, what level of density multiunit or dual occupancy redevelopment will take, and there is no appeal, no review.

From tomorrow we will see not only the implementation of provisions detrimental to protecting and enhancing the garden city character of our city but also a massive centralisation and, I would argue, politicisation of the planning process in the hands of the minister of the day. It is undemocratic, and it allows those with the ear of the minister to get the outcomes they want regardless of what the community thinks.

For all of these reasons, members should support my motion today. My motion sets out a process, first of all, to stop this proposed draft variation from taking effect. This motion directs the government not to proceed with the release of the proposed policies and code, so as to ensure that the policies and code do not trigger the requirements of the land act that allow for them to take interim effect and to have legal standing.

Interim effect would result in some of these proposed policies taking effect now. Normally this process is acceptable when a draft variation deals with the land use policy of a particular site. But this proposed draft variation will implement a policy which will apply to every single current and potential development or redevelopment site across Canberra. It is the most significant proposed change to the Territory Plan since the plan's introduction in 1994.

It is Labor's view that the proposed policies and code, as they currently stand, cannot be permitted to take even interim effect. They need to be reviewed, and Canberrans deserve the opportunity to be properly involved in a genuine process of review without the fear and the reality that the code and policies are already impacting in a detrimental manner on their suburbs.

The consultation process to date has been unacceptable. PALM has invited comments on the proposed policies and code. However, this process has not resulted in any significant change to the proposed draft variation. Feedback I have received on the process has made it clear that the government has had no genuine intention to alter any of the more controversial elements of the proposed changes, particularly those in relation to plot ratio controls, limits on private open space, insufficient controls on suburbs of territorial significance, and implementation of the section master plans without appeal.

I am therefore proposing that the consultation be revitalised. My motion proposes the establishment of a community advisory panel to review the proposed policies and code and to report on them to the Assembly. Members will be interested to learn that this proposal mirrors a proposal established by the Bracks Labor government in Victoria after

the significant community concern over the former Kennett government's proposals for a new VicCode, the equivalent of the proposed ACTCode 2.

The community advisory panel proposed in my motion would comprise community, residents groups, business and professional representatives. I would encourage the government to ensure that any such community advisory panel is properly resourced and given the opportunity to conduct meetings with interested parties across the city.

My motion also proposes that such a community advisory panel would present its report to the Assembly and that the government would be required to table its response to the report of the panel in the Assembly. Requiring the government to formally respond to the panel's report would ensure that the government and the minister would not be able to hide behind the facade of so-called consultation they have adopted to date.

Whilst the government has released the proposed policies and code for comment, they have not outlined what comments they have received, nor have they outlined how these comments have been addressed. As usual, they have simply set up a process which allows them to say, "We have listened" but then ignore the issues raised. Such a significant change to the Territory Plan deserves a better process of engaging the community.

This motion requires the government to explain in detail how this proposed draft variation will be implemented when and if it takes interim effect under the land act. I have received a number of representations from individual developers raising concern about what provisions they will be required to abide by if this draft variation takes effect. They want to know, when they are preparing the development application, which rules they have to comply with. Are they to comply with the existing requirements of the Territory Plan, or with the proposals outlined in the proposed draft variation? The problem is that they simply do not know, and, when they approach PALM, PALM does not seem to know either.

The land act does set out that in instances where there is a discrepancy between the two policies—that is, the existing policy in the Territory Plan and the proposed variation to the plan—the more onerous requirement will apply. This is fine for individual land use policies on individual sites. But in this case, where a policy will be implemented which will affect every single development application in the city and which will cover every single residential block in the city, the potential for confusion as well as for the implementation of policies which will have a detrimental impact on the garden city characteristics of Canberra is significant and real.

These proposed policies and code are too significant and potentially too detrimental to allow them to have legal standing in their current form. Broader and more genuine discussion is needed, and forums must be established which facilitate that. These are difficult documents to understand, but as an Assembly we must ensure that the debate brings people with it, rather than simply leaving them behind, disillusioned and angry. There is simply too much at stake to let this proposed new regime for residential development to go ahead now.

I would urge members interested in protecting the garden city and including people in the planning process to support this motion and prevent these misconceived policies from taking effect tomorrow.

MR STEFANIAK (Minister for Education and Attorney-General) (8.06): Let us look at some of the facts surrounding ACTCode. Mr Corbell has made a number of statements in the media recently in relation to it. They need to be addressed in turn. Firstly, the current Territory Plan policies, introduced by Labor, are supported by additional guidelines known as "Draft Guidelines for Multiunit Redevelopment including Dual Occupancy in Residential". These are commonly referred to as the Lansdown guidelines. These guidelines introduced the 35 per cent plot ratio provision for redevelopments for multiunit housing and dual occupancy within all residential areas except those with a B1 overlay, which are generally inner North Canberra and now known as B11 and B12.

This document was only ever a guideline and does not have any statutory force. Let me repeat that. It does have any statutory force. The inclusion of the 35 per cent plot ratio control in draft variation 125 gives it a clear legal status and removes any uncertainty about the maximum permissible plot ratio level for residential areas unless an approved section master plan is in place.

The revised residential policies require a master plan to be prepared before a redevelopment for multiunit housing other than dual occupancies can be approved. The exceptions are where a development is similar to that on adjoining blocks and has a minimal impact on those blocks. Such developments cannot exceed the 35 per cent plot ratio. Also, no master plan will be required where a block is greater than 1,200 square metres and located approximately 250 metres or less from a commercial centre—for example, group or local centres. The latter policy is to encourage housing around local and group shopping centres in particular.

Where an approved section master plan is in place, the policies state that the maximum plot ratio is 50 per cent. This is based on the premise that a plot ratio of 50 per cent is reasonable where it is in the context of an integrated plan that has been negotiated with the community. Plot ratio is only one of several control mechanisms that determine the amount of development that can occur on a site. In particular, site cover and open space provisions also apply. Element 5.6, private open space, introduces a requirement that 40 per cent of any dual occupancy site that is over 420 square metres is to be utilised for private open space. Private open space may include balconies, terraces and decks. There is currently no plot ratio for single housing in the Territory Plan. This provision remains unchanged.

Mr Corbell referred to escape clauses. The Territory Plan will define a number of clear rules such as the plot ratios and setbacks. Alongside of that framework, ACTCode is a performance-based code that is focused on the purpose of controls rather than specifying prescriptive rules. This approach provides opportunities for innovation whilst maintaining quality developmental outcomes. Flexibility is a fundamental feature of performance-based codes. All developments are to be assessed against the intent and the criteria in the code.

Mr Corbell referred to the six-metre dimension for private open space and its effect on trees. The minimum dimension of six metres for private open space is the same as in the current codes in the Territory Plan introduced under Labor in 1993. It remains unchanged under ACTCode 2. However, ACTCode 2 introduces further provisions which require additional space to be provided to protect trees on blocks. ACTCode 2 requires existing trees to be identified so that they are considered in the assessment process and allows appropriate decisions to be made about protection or removal and replacement.

Mr Corbell said that there is no specific protection for suburbs of heritage and territorial significance. Again, he is wrong. ACTCode 2 includes requirements that ensure that new development in areas of territorial significance is compatible with existing development. These requirements are augmented for heritage areas by the specific requirements listed in the Heritage Places Register or Interim Heritage Places Register.

Mr Corbell said that there is no protection of streetscape. Wrong again. In fact, ACTCode introduces a specific element, element 4.1, dedicated to the conservation and enhancement of Canberra's streetscape and landscape character. The new code puts more emphasis on producing residential areas of high visual quality, including both the public and private components that contribute to the identity and character of the neighbourhood—for example, landscape, building appearance, design, fences, walls and tree protection. The code introduces a concept of streetscape concept plans. These plans will be required wherever it is proposed to develop a new public or communal street. The element also includes specific provisions for multiunit housing and requirements for street tree planting.

This is an ill-founded motion, and it should be seen for what it is—a political stunt. Our Planning Authority has the power to gazette the variation. The Assembly, rightly, has no say in that. We have well-developed statutory consultation processes. There will be information seminars and the opportunity for members of the public to consider the facts, make their views known and have the Assembly in due course consider a draft variation.

MRS BURKE (8.12): The Canberra community is a changing community. The planning of the city needs to respond, therefore, to the changing community demands. We must consider that 52 per cent of households are now in fact one or two persons. Lifestyle changes, along with increasing separation and divorce, are going to impact also. The ageing population over 60 years is forecast to increase from 36,000 to 59,000 between 2000 and 2001. There is also an increased demand for higher density housing. Multiunit dwellings are now 44 per cent of dwelling demand. Reduced demand for the quarter acre block is evident.

The population decline in Canberra Central will also have to be taken into account. Whereas that population was 83,000 in the mid-1960s, it is now down to about 60,000. This has resulted in underutilised infrastructure—for example, roads, shops and open space. The average dwelling occupancy in Canberra Central has also fallen, from 4.2 persons per household in 1961 to 2.2 persons per household in 1996.

ABS projections indicate that over the next 20 years couple families with children will remain at about current levels, while the number of couple families will increase from 26,000 in 1996 to 42,000 in 2021. The number of lone person households is projected to increase from 25,000 to 47,000.

Increasing dwellings in established areas results in a better use of infrastructure and reduces annual infrastructure requirements for future developments such as in Gungahlin, responds to changing housing demands and places housing near employment, which means shorter trips to work. Potential greenhouse benefits will naturally follow. This is an essential component of the development of a sustainable, livable Canberra.

The community needs to be engaged in the discussion of the future city they want. They need to be informed of the changes that are occurring and then be involved in decisions that shape the future of Canberra. The draft variation, therefore, is a mechanism for the involvement of the whole community, and will be out for public comment until 14 May 2001, before finalisation by PALM, and ultimately tabling in the Assembly.

A key aspect for achieving sustainable development is effective communication and participation by the diverse range of communities in the ACT. The more the planning system provides opportunities for people to actively engage in these processes, the more decision-making will represent a broader cross-section of our community. A planning system that is flexible, transparent, consultative, representative, visionary and based on principles of equity will respond to a diversity of needs and contribute towards sustainability.

We have the right policies. They need to be explained to the community in a way that enables the community to make informed decisions. They can then put their views forward for consideration by the government and the Assembly. We should all reject this motion.

MR HARGREAVES (8.16): It seems to me that Mr Corbell's opposition to what is going to happen tomorrow addresses the garden city nature of our fair capital. As he said, the proposal is that 35 per cent of blocks be available. What this will mean, though, is that up to 50 per cent of blocks can be built on. In a sense, this flies in the face of the Lansdown review, which is the basis for a lot of what the government is doing. The Lansdown review talks about 35 per cent being available, but what is being proposed is up to 50 per cent.

There is also no provision for a safety net for the historic suburbs of Griffith, Yarralumla, Turner, O'Connor, Forrest, Narrabundah and Red Hill. The proposal allows up to 50 per cent of buildings to appear on blocks. My worry is that this will have the effect over time of turning a lot of our historic and leafy suburbs into concrete jungles. It will treat our historic suburbs just like greenfields, as though there were no character there at all. It would change the face of those suburbs.

The proposal by the government also leaves developments to put in proper sustainable infrastructure only if they feel like it. That should not be allowed to happen. We should be able to tell developers what can happen with sustainable infrastructure.

The section master plans give unfettered access to developers to build what they like on the block. They also give unfettered powers to the minister, with no appeal, as my colleague Mr Corbell said. We have had cause for concern in this house in the past about the use of the minister's call-in powers. We are unsatisfied that these call-in powers have been used responsibly. This proposal on the part of the government gives the minister unfettered powers. I wish to voice my opposition to such unfettered powers.

Mrs Burke said in her speech that this provides transparent, accountable and consultative processes. If I have left out one word or got one wrong, then I am sorry about that. She said that these plans need to be explained. I could not agree more. In fact, that was the very point Mr Corbell was making. The consultative process was not done quite correctly and quite appropriately. If Mrs Burke believes that that is the case, she will support Mr Corbell's call for the community panel to advise the government and this Assembly on what should happen with respect to this proposal on the part of the government.

As Mr Corbell said, these changes do not add clarity for developers. The people who have consulted my colleague have voiced their confusion about what they must and must not do. The developers do not know what is going on; we do not know what is going on; and I suspect, if the track record is any indication, PALM do not know what is going on.

Mr Corbell proposes that this process not proceed tomorrow; that we go back and we consult with the stakeholders. His proposed community panel would allow consultation with all the people affected. That is a fair process.

This proposal on the part of the government, as Mr Corbell said, is the most significant change to planning processes since the Territory Plan was introduced in 1994. The government has published its consultation policy. Yet we see evidence that the consultation process is a bit lacking. Certainly I acknowledge that there will have been some consultation on the part of the government. What I am saying is that it is a mere drop in the bucket. I believe Mr Corbell to be correct when he says we have a minister who is determined to push this thing through. There will be one only beneficiary if this thing goes through, and that will be the developers who have taken part in the consultation process with this minister.

Those developers who are confused clearly have not taken part in the consultation process. The residents of the historic suburbs, the Griffith, Yarralumla, Turner, O'Connor, Forrest, Narrabundah and Red Hill clearly have not been involved in the consultation process. If you allow it to go on in those suburbs, it will then encroach into Hackett and Downer and those suburbs which came to pass in the 1940s and 1950s. They will be next and it will just roll on.

The Labor Party is asking the government to stop for a second or two and create the community panel. The government did that in respect to the prison project. It got all of the stakeholders together and said, "You tell us." Mr Corbell's motion is saying that this Assembly does not have the confidence that the minister has performed the consultation process quite properly, to its completion, to the satisfaction of those people most affected. It does not trust him to take that consultation process on board. He says he has consulted, but he has not said what that consultation process revealed and what the government's reaction to comments was.

This Assembly is not convinced that the minister is doing the right thing with the consultation process. We would like to see the creation of a community panel so that it can advise this Assembly. The minister's use of his call-in powers in the past has been highly suspect. We have voiced our concern on a number of occasions in the past about giving the minister such unfettered powers, without any appeal. This just heightens my cause for concern.

To use Mrs Burke's phrase, if we are to be transparent, accountable and consultative, and if all of this needs to be explained, then put it to the community, the stakeholders, the people who live in the area, the developers and the people with expertise in planning and have them come back and tell us. If the government opposes that process, I would like to hear the minister stand up in this place and tell us why he is afraid of the consultation process. What is he afraid of in putting it out there and having this Assembly receive advice. Clearly he is afraid of the process, unless he stands up here and supports this motion. I look forward to Mrs Burke's support for the referral to the community panel.

MR KAINE (8.25): There are times when I wonder what rules this government works to. I received this draft variation in my office on 27 March, yesterday. It is a very significant document. I received it, interestingly enough, with a covering letter signed by an officer of Planning and Land Management Group dated 29 March, so it is quite clear that the original intention was to circulate this next Friday, the day after it is put into "interim" effect.

Since I received it together with yet another covering letter signed by the minister, also dated the 27th and received in my office on the same day, I can only conclude that that occurred because it suddenly occurred to somebody that we were putting it into effect a day before the document was going to be circulated to members of this place for their interest. Somebody thought, "Whoops, we had better whip it out quickly and get it into the hands of the members before it takes effect, namely, today."

The thing that concerns me is that the covering letter from the minister says that it is in the interests of all members to receive a full briefing. I would have thought they would have offered us the full briefing some weeks ago, if this is to take effect in any fashion from today, but no. The thing is dropped on our desks and we are told that it is going to be put into effect immediately.

The covering letter from Planning and Land Management Group also says that comments on this draft variation should be submitted by Monday, 14 May. So the government is putting it into effect two months before the closing date for comments on it. What on earth is the point of that? Surely, you do your community consultation before you put it into effect, not afterwards. This government talks about community consultation!

Mrs Burke spoke at length about the demographics. I do not think any of us needed to be lectured to about the demographics. Most of us have been around for a long time and we know what the demographics are. We are also well aware that the demographics change. But change in the demographics is no justification for making some of the changes that are proposed in this variation. Changes in the demographics, according to Mrs Burke,

mean changes in public attitudes to planning. I submit that that is a non sequitur. People's attitudes to planning do not change simply because the demographics change.

There is a very high level of expectation from this community, which is often disappointed, in the performance of the government. But their expectations have not changed much in the 12 years I have been in this place. Their expectations still are that the government will deliver good planning policy, and that good planning policy will not include constantly increasing the plot ratio. If this goes on, we will have a plot ratio of 100 per cent. Mrs Burke and members of the government will say, "Oh, that is because of changing demographics." It has nothing to do with changing demographics.

People's attitudes to overshadowing do not change either. I do not believe I am the only member of this place who receives letters from time to time from people complaining about their properties being overshadowed by new buildings that are being constructed adjacent. People get very upset about that. But we are changing the provisions about overshadowing.

We are changing the provisions about building height; we are changing the provisions about overshadowing; we are changing the provisions about plot ratio; and we are saying to everybody, "We are going to implement it today, and you have two months to comment on it." And the minister says to members of this place, "Oh, and by the way, you would do well to have a comprehensive briefing on this matter from my departmental officers." Putting the cart before the horse is one thing, but this is ridiculous.

The document says that, in accordance with the Land (Planning and Environment) Act 1991, this draft variation is to have interim effect for the defined period, and so on. I would not mind that being put in the document if it were a minor amendment that was being proposed. Maybe that would be acceptable in that case, but this is in no way a minor variation to the Territory Plan. Look at it—pages of it, a whole volume of it.

I have already asked the minister to explain the practical effect of putting this variation into "interim" effect. What does that mean? Does it mean that it is somehow less effective? I am not too sure what the qualification in the minister's covering letter that says this document will take interim effect this Thursday means. Either it takes effect or it does not. In fact, if you read the document itself, you will see that it clearly does take effect in an unqualified manner. What the use of the term "interim effect" in the minister's covering letter means I am not clear.

It is quite clear that the government seems to have lost the plot completely with community consultation. Mrs Burke said the community wants to be involved in consultation on this matter. She was dead right on that, but to implement it first and then say, "We will consult with you afterwards" is a very strange way for the government to go about its business. I have to say it is not inconsistent with much of what the government has done over the last three years. I suppose that if they stay in government it will be consistent with what they propose to do for the next three years.

I have some considerable sympathy for the position being put forward by Mr Corbell. I think the government needs to take notice that there is almost duplicity in the way this matter has been dealt with. I find it quite disturbing that the government should try to do its business on a very significant matter in this way.

MS TUCKER (8.33): We all know that planning in the ACT is a very controversial matter and that the residents of Canberra care very deeply about their city and are very suspicious of proposals that move away from the bush capital heritage. When representatives of the OECD were here recently to study our planning, they expressed surprise at the level of conflict in the ACT around planning issues. The proposal in this regard just confirms what certain members of this Assembly—Mr Kaine, members of the Labor Party and I—have been quite aware of. It must be an indication that things are not being managed properly.

There is concern about the strategic direction, or lack thereof, that this government is taking and there is also concern about the way decisions are being made. The government's proposed policies for residential development in the ACT have served to inflame the ongoing controversy. I do not have a problem with PALM reviewing the existing controls on residential development and putting forward amendments. Obviously, we should be attempting to make ongoing improvements to our planning controls so that we can achieve best practice. However, how PALM goes about that and what the end result will be are controversial issues.

I note that PALM has acknowledged that the changes being proposed in this draft variation would have wide-ranging effects on Canberra's residential areas and that the information presented in the variation was technical and complex. Therefore, it decided to release the proposals for public comment last October, rather than releasing a formal draft variation to the Territory Plan, which would have had interim effect. It concerns me that the government has now announced that it will be releasing the draft plan variation tomorrow, before the issues raised in the community by the government's proposals have been resolved.

As usual with documents of this complexity, there are some good parts and some bad parts. I do not think anyone would disagree with the objectives of these new policies, which are to protect the predominantly low-density, low-rise, leafy character of most established residential areas.

Mr Kaine: It sounds good.

MS TUCKER: It is not quite the vision Mrs Burke was putting, but the objective is to foster creative, high-quality living environments in new and redeveloped areas; to offer a wider variety of attractive and affordable housing choices which meet the changing needs of the ACT community, which was Mrs Burke's point; to promote sustainable, environmentally sensitive development which is less dependent on car travel and which minimises infrastructure and service costs; and to ensure residents have convenient access to needed community and commercial facilities. It all sounds good.

In the document there are more detailed objectives within the individual sections which amplify these points and which I generally agree with. Some are quite idealistic and innovative, such as the section on water harvesting where the objective is to develop the

resource potential of stormwater and waste water to reduce the need for a potable water supply, and the section on design for reduced resource and energy consumption. The problem is that the rhetoric does not fit the reality. You just have to look at what is happening in suburbs such as Braddon, Turner, O'Connor and Kingston to see that the objectives are not being met.

We are seeing wholesale changes to these areas that, if not stopped, will create a monoculture of two and three-storey blocks of flats across large areas of inner Canberra. Other inner suburbs, such as Ainslie and Yarralumla, are being transformed by dual occupancies and whole new houses being crammed onto blocks. I am not saying that there should never be any change to these areas. The issue is how well this redevelopment is managed and whether we are seeing improved amenity for residents from these changes.

The feedback I am getting from residents of these areas is that their amenity is being detrimentally affected. That would indicate to me that the performance measures that are being used to assess applications for these types of development are not adequately meeting the objectives. It is, of course, also the case that many of the performance measures relating to multiunit redevelopments can be overridden through the use of section master plans. There is some public consultation in the development of these section master plans, but the minister approves these plans and there is no statutory means for the affected residents to object. As part of the review of the residential policies, I think there needs to be a close examination of the adequacy of these section master plans and the process by which they are developed.

The revision of existing policies for residential development is therefore critical to ensuring that we get back on track on creating a high-quality, sustainable and living city. Unfortunately, I do not think that there has been enough debate on these new policies. My office has had a quick look at the draft variation, which we received only yesterday, and compared it with the draft released in October. There appears to be very little change between the two. A few paragraphs have been added to the explanatory statement of the plan variation, but the substantive sections of these documents appear to be virtually unchanged.

That is very interesting. Is the minister seriously claiming that all the comments on the original draft were positive? That has to be the implication. We can see virtually no change in the draft. What is the process there, which is another thing I find of concern? Where is Mr Smyth? I wish he were here, because I would like answers to that. We do not know what comments were made. We know from the feedback we are getting in this place that the residents are not happy, that they are very unhappy, but there has been no change and we cannot see what the comments were. That is not good community consultation.

Mrs Burke is not here, either. She waxed lyrical about community consultation. The process has been appalling. Mrs Burke should be crossing the floor on this motion, according to what she said in her speech. You cannot claim in any way that this process has been legitimate consultation. Mr Corbell's motion is seeking further public consultation on the proposals before the formal draft variation is released and has interim effect. Such public consultation should happen anyway once the draft variation is released. So the critical point in the motion is that it does not allow the variation to come

into interim effect until the Assembly has considered the results of the public consultation.

Mr Kaine put it very well when he quite rightly expressed amazement at this process. Given the complexity of the document, I think it is a reasonable approach that we do have time and that it is not given interim effect at all because there is confusion about how the policies will be implemented in this interim period until the variation is finalised. Mr Corbell is also proposing that a community advisory panel be established to review the proposed policies. I am a bit concerned that this panel overlaps with the role of the LAPACs and that the LAPACs appear to have been sidelined in the process.

The LAPACs have their problems, but we should encourage them to contribute to this debate, if they want to, because they already have quite extensive experience in the assessment of redevelopment proposals in existing residential areas and in attempting to reconcile different opinions on what is appropriate development. This new advisory panel would, however, have to start from scratch. On the other hand, I am always open to trying out new public consultation processes so that we can find an effective process.

Mr Kaine: You could always try talking to each other.

MS TUCKER: You could try talking to them, Mr Kaine. It certainly could not be worse than the current superficial approach of this government, where consultation seems to be more about trying to justify decisions already made, rather than being a genuine attempt to come up with a broadly agreed approach to a particular issue.

I am therefore prepared to support the establishment of this community advisory panel in this instance as a trial. I would just make the point, though, that I do not think that this proposed community advisory panel should be the only channel of public consultation which could be applied from this motion. I am therefore putting up an amendment to Mr Corbell's motion to make clear that the government must respond not just to the reports of the community advisory panel but also to comments received from the general public and from the LAPACs. I move:

> Paragraph (e), after "report" insert "and other comments received from the Local Area Planning Advisory Committees and the public on the proposed policies and code".

MR SPEAKER: Before I call the minister, it would be remiss of me not to acknowledge for the sake of *Hansard* that Mr Wayne Berry, our third Temporary Deputy Speaker, occupied the chair shortly before I resumed it.

Mr Osborne: Mr Speaker, I would like to add that I think he did a fine job, too. He did not say a word. There is probably a role for him there.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (8.44): Once again, Labor has got it wrong. Mr Corbell has added to the litany of mistakes he has made and misinformation he has put out about planning in the ACT with some of the words that he used tonight. Let us go back into the record. For instance, Mr Corbell said that the current government was responsible for the 5 per cent rule of thumb whereas, in fact, it was his government

that put it in place in 1993 and ACTCode 2 will lead to there being about 10 per cent of open space in the suburbs.

You have to remember that Mr Corbell said we were going to fill in all the urban open space. He knows that that is just not true. He said that this government was not interested in enhancing the amenity of Canberrans, but forgets to tell people that we shifted the Gungahlin Town Centre, that plans are under way to put 100 hectares of yellow box/redgum woodlands back into the nature reserves, that we have now said that Jerrabomberra Valley will not go ahead as a development site, and that we have saved the Tuggeranong Homestead, which Labor said could be built upon.

Do members remember when he said that this government is a government that is about a land grab? If you check the record, you will find that Labor sold 11,000 blocks for development in four years, compared with the 3,000 blocks that we have sold from 1995 to the present. He said that we were allowing all the dual occupancies to go ahead and half a suburb a year or suburbs every year were disappearing. Labor approved 637 dual occupancies between 1992 and 1995, whereas from 1995 to today this government has only approved just over 420 dual occupancies. We have to start by taking everything that Mr Corbell says with a grain of salt because so much of what he has said has proven to be misinformation. Yet again tonight we have more misinformation and more of him not quite painting the right picture.

Let us talk about some of the misconceptions that are out there about ACTCode 2. It has been said that ACTCode 2 will lower residential development standards for the ACT to the national average. That is not true. ACTCode actually strengthens and customises the latest version of the Australian code to meet Canberra's unique requirements. One of the allegations is that there will be lower standards on setbacks. Front setbacks will remain unchanged and verge widths will increase, so the amount of space in the streetscape will be larger. There are to be some changes to side and rear setbacks. For example, for walls with windows, the minimum setback is being increased to 12 metres where the floor level is six metres or above the natural ground level. Previously, the minimum setback was typically nine metres, but as little as three metres for walls without windows.

Another misconception is that a blanket plot ratio of 0.35 will mean an increase in the size of multiunit developments Canberra-wide. ACTCode does introduce a mandatory 0.35 plot ratio for dual occupancy and multiunit developments. Currently, there are no formal controls on plot ratios outside the B11 and B12 areas, where the Lansdown guidelines provide a plot ratio of 0.35, but it has no statutory force. This will give them force. The new control provides certainty and greater protection for the community. It can only be increased to 0.5 with an approved section master plan, which would have to be negotiated with the community. I can go on; there are many more. What you have to do is to look at what it seeks to achieve in the whole. Mr Speaker, Canberra is a special place and the revised ACTCode seeks to protect the unique character of Canberra. The things that most of us value most about Canberra will be saved and reinforced by what is in ACTCode 2.

There is some concern about the term "interim effect". Having interim effect actually makes things harder, not easier, because it means the most onerous of the obligations under the existing situation and the proposed situation is the default position. That is what still has effect. If there is something stronger in ACTCode 2, it has affect. If the

existing law is stronger, it remains in effect. Mr Kaine raised the question: what does this mean? Mr Speaker, it is the same as the process that has seen interim effect applying to about 100 DVPs since 1993. It is the process. Interim effect is the process that we go through every time a DVP is released.

I am happy to offer briefings on the land act and the Territory Plan and explain even more fully the words "interim effect", but interim effect does not give anything away. In fact, interim effect becomes more onerous, because the more onerous of whichever part, the existing or the DVP, has the overriding effect. So this is tougher; for a period, interim effect means that it is tougher. The Lansdown guidelines have no force under law. This will give the Lansdown guidelines on the 0.35 plot ratio the force that is required.

Mr Hargreaves said that I have unfettered powers. Ministers probably dream of having unfettered powers, but the powers that I have are not being changed by this proposal, because the land act still will be in force and these changes are being incorporated into that through the interim effect, which means that the more onerous of the parts referred to, the DVP or the existing, will have effect. Mr Hargreaves claims that only the developers will benefit. In fact, the developers might find themselves a little bit worse off for the period they have to work within the more onerous of the parts.

Mr Speaker, this proposal is about improving on Labor's planning mistakes from the early 1990s. Mr Corbell acknowledges every now and then that they did some things wrong. He is never very clear and he has never tendered the list of things, but the changes that were made to the existing AMCORD were made in 1993 and Labor's changes with the original ACTCode in 1993 which reduced things like street and verge widths stifled quality development and resulted in some of the developments in the new suburbs that we all now believe to be unacceptable or substandard by today's expectations. I am not sure why any of us should believe what Mr Corbell brings before us, given that on so many issues in the last six months he has been about politics and scaremongering, not facts.

Mr Speaker, let me put the debate into perspective. Canberra is a special place. It has its own unique character and most of us have an opinion on what contributes to that character. The one defining element on which all of us are likely to agree is the quality of Canberra's landscape setting. Ask anyone and they will tell you that the parks, the trees, the streetscape, the hills, the lakes and the rural vistas are integral to the livableness and special attraction of the city.

At the broadest levels, both the National Capital Plan and the Territory Plan set all planning against a framework of protecting and enhancing our landscape setting. It is clearly in the interest of governments of either persuasion to do that. In reality, the dynamic nature of planning for a changing community means, if you think of Canberra as a canvas painting, that sometimes you need to go back and touch it up.

To illustrate that, an increasingly significant impact on our housing requirements and mix results from the demands of the ageing population. That does have an impact. The 60-plus sector of the population is forecast to increase from 36,300 in June 2000 to 58,700 by 2010. There are many resource implications associated with that, not the least for housing. The talents of the planning artists in this case in tackling the drivers of change is to keep the original picture firmly in mind, retaining what we cherish, at the

same time as they are allowing change to occur. The challenge for me as planning minister is to ensure that the tools are in place to achieve that outcome.

Last year, I gave a direction to the ACT Planning Authority to give paramount consideration to high-quality design and sustainability in the assessment of development applications. The tools to achieve that include the quality design indicators, the Canberra sustainability index and site analysis guidelines, and the establish of a design review panel to complement PALM's capacity to change the culture of some parts of the development sector to one of striving for excellence. There will be further announcements on that. *(Extension of time granted.)*

Draft variation 125 to the Territory Plan, which sets out new residential policies for the ACT, seeks to achieve a balance between protecting and enhancing these qualities and characteristics and providing the economic, environmental and social benefits that a competitive, modern city needs to be able to provide. The draft variation is to take interim effect on 29 March, tomorrow. I announced it last October. An issue was raised about the lack of consultation. It seems to be that, if you have consultation, there must be some noise or controversy about it. The reality is that we have been out there consulting and the consultation produced a number of submissions. How many, Mr Speaker? Five.

We have been to every LAPAC to explain this variation. There have been public meetings. There were three or four in October and November. There were more in December. There have been more this year. Indeed, there were three tonight. We addressed the Weston Creek Community Council, there was a meeting at the Ainslie Football Club after we had had a letterbox drop over a wide area to entice people to come and listen, and there was one at Deakin for members of the HIA. There has been plenty of consultation. Do not make the mistake of thinking that, because there has been no controversy or noise, we have not been out there adequately addressing the needs of the community and consulting with them, because we have. The interim effect is to remain in place until the draft variation has completed its consultative processes and then the process, which includes the Planning and Urban Services Committee, would allow the changes to take place.

Mr Speaker, in totally replacing the existing residential policies, part B1 of the Territory Plan, the draft variation provides a new framework, comprising a number of elements: general controls applying throughout the ACT; the ACT code for residential development, ACTCode; area specific policies; and section master planning for specific sites. Section master plans will be required for all multiunit development throughout Canberra, again an enhancement and a step forward.

The great majority of the residential policy variation is not new. Rather, it brings together in one document the ACT standards for new neighbourhood development, the subdivision of land, and the design and siting of all housing types, including medium and higher density redevelopment. For the foreseeable future, by far the majority of the established residential areas are intended to retain their present character.

Heritage precincts and heritage suburbs were raised. For those that have not been paying attention, we have been out again consulting on, I think, the nine heritage precincts because the existing citations in the Territory Plan are too weak and cause us all sorts of grief in the AAT. We will strengthen the heritage precinct citations and we will make

sure that they are afforded protection. That will be with us shortly. It will be a big step forward in protection of the heritage nature of the ACT.

In broad terms, the area specific policies provide for medium and higher density housing in inner north Canberra and some other locations close to the commercial and employment centres of Civic, Kingston, Griffith and Gungahlin. They offer a wide range of accommodation types, and/or commercial and community uses in certain locations, including Northbourne Avenue, the Gungahlin Town Centre and Forrest. They put in place a single storey limit in environmentally sensitive areas where impacts need to be minimised and offer protection for the special character of Hall and Tharwa. They are far more encompassing than Mr Corbell has portrayed to this place tonight.

Having made the point that the great majority of draft variation 125 is unchanged, it is equally important to spell out that ACTCode constitutes a significant change to the way residential development will occur in the ACT. Combined with the government's quality and sustainability initiatives, it will make a difference. It truly requires a new way of thinking about residential development based on a whole-of-neighbourhood approach, whether what is being planned is a new single residence in an existing suburb, a greenfields development or a dual occupancy or multiunit redevelopment.

No-one who is undertaking residential development will be unaffected. Applicants and the assessing officers will need to demonstrate that they have considered the character of the streetscape and the neighbourhood in both new subdivisions and established suburbs. ACTCode constitutes a significant change to the way residential development occurs in the ACT. Yes, it will make a difference. Everyone who is undertaking residential development will be affected. *(Further extension of time granted.)*

Mr Speaker, it is performance-based rather than prescriptive, but set against the clear rules of the Territory Plan. It focuses on quality outcomes, not detailed rules. It challenges those who are designing dwellings, and approving them, to think outside the box-ticking approach to design. Maximum plot ratios—that is, the ratio of floor space to the size of the land—are being introduced for all medium unit housing, including dual occupancy. Generally, the maximum plot ratio will be 0.35, unless there is an approved section master plan, agreed with the community, which may allow a plot ratio of up to 0.5. The 0.35 plot ratio does not change the policies which Labor put in place in the mid-1990s following the Lansdown report.

Other aspects of the ACTCode are not new, but they do raise the bar much closer to the levels that Canberrans used to take as the norm before Labor's relaxation of the rules in the early 1990s let us all down. For instance, more generous street verges are required in new development areas once again to enable large street trees to prosper. That will make development a little more costly for the territory, for the taxpayer, but will enable Canberra's garden city character to be extended into the newer parts of the city. Tree-lined streetscapes and landscapes such as Grant Crescent in Griffith will be a formal requirement. That and other elements of ACTCode on tree protection, the enhancement and provision of street trees and trees on blocks and in new estates are to reinforce and enhance Canberra's garden city character and protect important wildlife habitats.

ACTCode has a strong focus on building appearance and neighbourhood character, requiring a whole neighbourhood approach to residential development. It addresses some of the ad hockery that we put up with currently. The intent is to ensure that the appearance of developments from the street and other public areas is attractive and visually compatible with the area and to ensure that external colours and finishes of buildings and structures above roofs are not excessively intrusive or likely to cause a loss of amenity to the streetscape or neighbours.

Additional specific requirements are being introduced for garages and carports, including basement parking in multiunit developments, the intent being that they do not dominate the streetscape. More stringent attention is paid to site planning, building design, on-site plan, front boundary setbacks, building envelope and siting, privacy, on-site car parking and access, private open space, security, and design for reduced resources and energy consumption. I am sure that those are issues that we have all had contact with constituents about, and it gives greater protection.

Site analysis plans, expected to help streamline the approvals process considerably if they are prepared early in the design process, will be mandatory for every substantial residential development application, addressing the context of the development, planning and development intentions for the site, adjacent properties and the site's physical characteristics. Again, not being mandatory now, that is a step forward.

No longer will people be able to buy a block in an established area, pick their dream home out of a range of plans and determine how the two go together to make the whole, when we all know that often they do not. Practitioners designing dwellings will need to become street smart in negotiating acceptable economic and design solutions. That includes negotiating with neighbours and other members of the community to design, site and build dwellings which maximise quality outcomes within the neighbourhood context.

There has been much discussion about ACTCode. Some of it has been scaremongering and some people have been saying the policies do not go far enough, especially as far as tree preservation is concerned. An extensive tree protection policy is currently being prepared by the government to address this issue and it will complement ACTCode. The government understands what the community values about the amenity and unique qualities of this beautiful city. It is now more challenging to achieve outcomes that everyone will be happy with, but the common objective remains the same.

ACTCode truly is one of the tools for retaining these qualities and this amenity and, at the same time, allowing for the city to evolve. It has been developed through extensive consultation over several years. Its intent is once again to place Canberra in a position of leadership in terms of the quality of our streets and our suburbs. Against the framework and criteria set out in the Territory Plan, it is performance-based rather than prescriptive, with the focus being on achieving quality outcomes rather than specifying numerous detailed rules. *(Another extension of time granted.)*

The performance base enables more innovative design solutions to get through the system, but it does challenge those who are designing dwellings and approving them to think outside the box-ticking approach. There are also specific requirements, including that of section master plans for all multiunit redevelopment of formerly single-dwelling

housing blocks. It adopts the successful section master planning process which has been used in the inner north in recent years and extends it throughout the city.

As I stated at the outset, the government understands what the community values about the amenity and unique qualities of this beautiful city. It is now more challenging to achieve outcomes that everyone will be happy with, but the common objective remains the same. Increasingly, we have more comprehensive and sophisticated tools at our disposal. Let us talk about the tools and their application. Let us acknowledge and understand the evolving nature and needs of our community within this great city and agree on the way forward.

ACTCode has already been the subject of extensive consultation and it is about to move into the next formal round of consultation. Yes, there will be more consultation. There will be public information seminars and information published which will provide the facts for those who are interested. That will enable residents to make an informed assessment of the impact of the policies. They will then be able to provide their comment, which in turn will be considered by the Assembly.

Mr Speaker, I wish to reiterate the point about the interim effect. Are we giving anything away? No, we are not. The interim effect means that the most onerous provision, either from the existing situation or from the draft variation, will apply. That makes it tougher, it makes it stronger and it makes it even harder on developers. We have the appropriate processes in place to consider these very important policies. Let them run their course and let us not have them subverted by Mr Corbell.

MR OSBORNE (9:07): Mr Speaker, the issue for me on this motion is not necessarily about the content of ACTCode at this stage. It may well be later. I have to be honest and say that I have not, and I am quite certain my office has not gone, through the guts of what is actually contained in this document. That concerns me a little bit. It concerns me as well that there seems to be some perception that there has not been enough community consultation. From listening to Mr Smyth, it is quite clear that many changes are being proposed by this government, so it concerns me to think that there is a perception, whether real or not, that people have not had the opportunity to give feedback.

My understanding is that the document was put out about six months ago, but the reality is that there was no opportunity for the community to make any comments on the information. I am concerned that enough has not been done. The question for me is what to do. I have looked at Mr Corbell's motion and it does seem to me to create a process which could get bogged down for quite a period. We are all well aware of the passions that planning evokes in some people, myself excluded.

I understand that lots of people are quite passionate about planning. My fear about setting up an official community advisory panel is that it would get bogged down and achieve nothing and that there would be a lot of infighting. I do not quite know how the community panel would be established. In paragraph (b) of the motion, Mr Corbell has given some indication of who should be on it, but many community residents associations and professional and business representatives might want to get on the panel.

One of the biggest mistakes we have made in relation to community panels was the setting up of the prison community panel. I think that it was just too big. My fear with what Mr Corbell is proposing is that everybody would put up a hand and we would have another situation where we had an extraordinary number of people attempting to work together. We all know how difficult it is to do so on small committees of three members. My committee has four members and it is difficult to do so. It is not too difficult, but there is some work involved in trying to come to a consensus.

The fact that there is a perception, whether real or not, that the community has not had an opportunity to consult concerns me, so I am prepared to support a delay in the implementation of this ACTCode. I think that we do need to have a set timeframe. I am quite comfortable with the government or PALM undertaking some more consultation and then reporting back to this Assembly. I have an amendment to Mr Corbell's motion which I think would do that. I am just giving notice of it. I will move it after Ms Tucker's amendment is finished with and I get the nod from you, Mr Speaker.

I am concerned about what Mr Corbell has had to say about consultation. I am quite comfortable with delaying the implementation of this ACTCode. I am also concerned about the way that Mr Corbell wants to move from here. At the end of the day, we in this place will have to make a decision on what the government has put forward and everybody in here will have to vote on the body of it. I am quite comfortable with allowing PALM or the government to undertake some more consultation.

The fact that there is a perception that there are people who feel that they have not had the opportunity to have some input concerns me. I appreciate the government's concern about wanting to move ahead. Mr Smyth has informed me that people within the department have been working on this ACTCode for a number of years, so I have kept the extra consultation period quite short—to a period of three months—so that there is an opportunity for us to make a decision on what the government is proposing sooner rather than later.

MR RUGENDYKE (9:13): As usual, this issue has created a few dilemmas for all of us in this chamber. It is about a large document that most of us have seen for the first time during this process. I think that has spooked some of us. The reason it appeared on our desks in the last few days, according to the Planning Authority when I spoke to it, is as a matter of courtesy in a way. Also, we are seeing it for the first time through Mr Corbell's motion, for which I have some sympathy.

It worries me that such a large document appears to be being rushed through this process but, in reality, it has been going on for two or three years in various forms. It has been out for public consultation of sorts. Some will not be satisfied with that, and I can understand that. Concerns by five people have resulted in very little change to the document as it has appeared here today.

I have major concerns with section master plans. Through out planning committee, we have seen problems with group centre master plans and I have no reason to suspect that section master plans would create less of a problem. It is wise to proceed with caution in these matters. I have been given an assurance by the minister that no section master plan would be signed off until it has been through the urban services committee. I am still in

a dilemma. I think that Mr Osborne is correct in wanting to keep this process moving. I think it is also important to exercise caution in the coming phase.

There is concern by the Planning Authority that with a gazettal tomorrow their process will be somewhat interfered with. It is the role of the Planning Authority to decide when to get a draft variation gazetted and out into the public arena for further consultation. Consultation will continue. Even at this late stage of the debate, I find it difficult to resolve this issue in my mind. I understand the frustration of the Planning Authority, who are going through their normal process and have been interrupted by this debate today.

Mr Speaker, I will continue to listen to the debate, although there may not be too many speeches left. I will be convinced one way or the other at some stage of the game.

MR CORBELL (9.18): I will close the debate, unless another member wishes to speak, by responding to a range of issues raised in the debate. First of all, I thank members for their support for the thrust of this motion; in particular, the proposal not to permit this proposed policy change, this draft variation, to take interim effect. I do believe that that is the most important decision the Assembly needed to take tonight.

I would like to respond to a number of issues raised by other members in the debate; in particular, Mr Smyth. Mr Smyth went to great pains to make the argument that interim effect means that the provisions are tougher, to use his words. The reality is that that is simply not true. I have only to point to one example to demonstrate that. At the moment, there is no provision in the Territory Plan to permit section master planning for residential development, particularly for dual occupancy development.

The proposed code does implement a section master planning process. Therefore, if this draft variation had interim effect, a developer would be entitled—indeed, obliged—to prepare a section master plan for any multiunit development. It would be the more onerous requirement under the Territory Plan. But with section master planning, there is a provision that permits any of the provisions of the code to be exceeded or ignored. For instance, setbacks can be less than specified in the draft variation or the existing Territory Plan, because section master plans allow that to happen. Equally, the level of density permitted in the draft variation or the Territory Plan can be exceeded through an approved master plan. That will happen if the draft variation takes effect tomorrow. So it is not a more onerous requirement. Indeed, in a roundabout way it is a less onerous requirement. But it will happen and, what's more, it will happen with the permission of the minister and without any provision for appeal or review. That is not acceptable and that is not making it tougher.

Secondly, the minister raised the issue that the government was implementing the recommendations of the Lansdown review. In a number of respects, they are formalising recommendations of the Lansdown review, particularly in relation to dual occupancy development. But in two respects they are not. The first one is recommendation 2 of the Lansdown review, relating to dual occupancy development. Lansdown recommended that the floor space ratio—that is, the plot ratio—should be no higher than 0.35, 35 per cent of the block covered by building. The new code will permit dual occupancy development to cover up to 50 per cent of the block through a section master planning process. The government is not implementing the provisions suggested by Lansdown in that review; it is going beyond the provisions suggested by Lansdown.

Lansdown recommended in relation to areas of territorial significance—that is, those suburbs that do not have heritage listing, but are recognised for their significance in the development of the garden city—that any approval for dual occupancy should be subject to further measures designed to preserve the character and amenity of the locality. That is a recommendation of Lansdown. There is nothing in this new code that deals with suburbs of territorial significance, nothing at all. Indeed, the government is walking away, as the minister is doing right now, from any commitment to protect the suburbs of territorial significance.

Before the minister comes into this place and starts lecturing me and other members of this place who are prepared to support this motion about how the government is going to make things tougher and implement the Lansdown review, he should read the review properly, because he has ignored two key recommendations. You must protect the suburbs of territorial significance, and they have failed to do so. Why? You must protect the suburbs of territorial significance because they are the ones where the redevelopment pressure is greatest—Braddon, Griffith, Narrabundah, Kingston, Yarralumla, Red Hill, O'Connor and Turner. Those are the suburbs where the redevelopment pressure is greatest. Those are the suburbs where the bulk of the dual occupancy development is occurring. What is this government proposing in this code? Far from making it tougher, they are simply ignoring the significance identified by Lansdown of those suburbs. It is about time the minister went and properly read the Lansdown review.

Mr Smyth says that he is not going to get an increase in powers. Let me just say this to Mr Smyth: he has only to turn to page 15 of the policy section of the draft variation, which says in relation to the preparation of section master plans for multiunit development, including dual occupancy development, that specific ministerial approval of section master plans will be essential. Those are the words in the draft variation. The minister, and the minister alone, will be the person who signs off on each section master plan. Indeed, the government says in its own document that it is essential that he do so.

How can he stand up in this place and argue that he is not getting increased powers? How can he do that, particularly in light of the fact that once he approves a section master plan which can, with his approval, exceed the provisions of the code or ignore certain provisions of the code, there will be no appeal? Not only does he get the power to approve it, but also he gets the power to approve it without appeal. I would argue that that is a significant increase in power. I would ask the question: would any member of this place trust this man to approve a dual occupancy next to their house? I would not.

Let us turn to the Liberals' commitment. Mr Smyth always has fun harking back to the days when there was a Labor government. I would like to hark back to what the Liberals said at that time. Mr Speaker, I know that you will take particular interest as you were the planning spokesperson at the time, I understand. Mr Speaker, speaking in relation to dual occupancy, the Liberals said in "Planning: A Question of Balance", their policy document for the 1995 ACT election, "In established areas of Canberra the roofline must be in keeping with the surrounding area, single storey unless adjacent to an existing two-storey development." That is good policy. I like that policy. That would protect the low-rise amenity of a suburb.

Let us turn to the draft variation, Mr Speaker. Under controls over the height of buildings, it says, "Except where provided for below or under section 4, area specific policies, the maximum height of buildings shall be two storeys." So it is not just only two storeys if next to an existing two-storey; it is just two storeys. *(Extension of time granted.)* What the government says it will do, what it committed itself to doing and what it does are different things. Perhaps Mr Smyth should check his history before he starts commenting on ours.

Secondly, let us look at the Liberal Party's commitment on plot ratio control. You have got to remember that this policy was prepared in the context of the Lansdown review. In fact, it specifically refers to the recommendations made in Lansdown's report. Let us turn to plot ratio controls. The Liberal Party policy then was that there must be a floor space ratio of 35 per cent or less.

Mr Hargreaves: Or less.

MR CORBELL: Or less. What does the draft variation propose? It proposes 35 per cent, except where there is a section master plan which will permit it to be increased to 50 per cent. Who approves it? The minister approves it, not the Planning Authority. So let us reflect properly on the reality of the Liberal Party's previous statements on this matter before we make judgments about Mr Smyth's comments on the history of planning in Canberra.

Mr Speaker, I turn to the final comment I would like to make in relation to Mr Smyth's comments. He said that PALM will consider the streetscape. He said, "We are going to recognise the streetscape. We are going to address the streetscape. We are going to have provisions to make sure the streetscape is protected." I ask the minister: what do you mean by "streetscape"? I looked up the draft variation definitions. In it there are proposed new definitions for a range of terms. There is nothing in here about the streetscape. How can you protect something when you have not even defined it? How can you do it? You cannot do it. It is a nonsense.

The government talks about protecting the streetscape, using fine words, but when you look at the detail, you find that it has not even defined "streetscape". You can bet your boots that a development proponent would be able to stand up in the AAT and say, "This is what I mean by the streetscape and this is what I am protecting," and the government, hapless as ever, would say, "Oops, we forgot to define what streetscape is." Once again, the high-minded, lofty principles they espouse will count for nothing when it comes to testing these provisions in the planning appeals process. What a joke!

Mr Speaker, in conclusion, members should be supporting this proposition today because it says to the government, "Go back and do the work you have not done. Go back and genuinely engage our community in a debate about the most wide-ranging and significant changes to the Territory Plan since the plan's introduction in 1994. Recognise that the reason you only got five submissions was not that everyone thought it was pretty good, but simply that they did not actually know they could make them. Recognise that people only now are starting to appreciate what this document means and give them that opportunity to comment. Do not run around and say that you had a consultation process and there were only five comments. People are not that naive."

We need to make sure that the draft variation does not take interim effect. We need a process that properly engages people. Labor has set forward its process. I note that Mr Osborne has foreshadowed an amendment. Ms Tucker has tabled her amendment. We will be supporting Ms Tucker's amendment. I have no difficulty with including LAPACs in the consultation process. The process Labor has proposed for a community advisory panel is consistent with that adopted by the Bracks Labor government in Victoria, following the Victorian electorate's rejection of the Kennett government's VicCode. *(Further extension of time granted.)* We are adopting a similar process.

If Mr Osborne is concerned about a time limit or that the process may get bogged down, I would suggest that he propose a time limit in which the advisory panel can report. If, however, it is the will of the majority of the members of this place to support Mr Osborne's proposition, we will not argue against that because we believe any other process is better than the one that has existed to date. The important thing is that people are engaged in this process and the government is forced, not just to listen, but to respond to community concerns. I would hope that the debate today has helped to highlight exactly what it is we are addressing here and its significance and that, as a result, we will all be better informed and the policies will better reflect the aspirations Canberrans have for their suburbs.

MR SPEAKER: Perhaps I should explain advice I have received from the Clerk. I am about to put the amendment moved by Ms Tucker to Mr Corbell's motion. I want it to be quite clearly understood that carriage of Ms Tucker's amendment would prevent Mr Osborne's amendment coming forward. Mr Corbell understands that because he has referred to it. I am not asking for a particular view to be taken. I am simply advising members that that will be the consequence. Members should vote as they wish.

Amendment negatived.

MR OSBORNE (9.36): Mr Speaker, I seek leave to move the amendment circulated in my name.

Leave granted.

MR OSBORNE: I move:

> Omit paragraphs (a) to (f), substitute the following paragraphs:
>
> "(a) a further 3 month public consultation is undertaken on details of the proposed policies and code;
>
> (b) the outcome of the consultation is provided to the Government; and
>
> (c) the Government has responded to and tabled the report on the consultation and the response in the Assembly and the Assembly has completed any consideration of the report and the response.".

MR SPEAKER: Do you wish to speak to the amendment, Mr Osborne?

MR OSBORNE: No.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9:37): I will be brief, Mr Speaker. Mr Osborne has moved for a further three months of consultation. We think that the proposal is ready for gazettal, but that is okay. Mr Corbell raised a few interesting points. For Mr Corbell's benefit, the definition of streetscape is already in the Territory Plan. It is in appendix 6. He should check before he jumps. In regard to section master plans, I was surprised to hear Mr Corbell, the planning expert, tell me that I was about to get more power; so, in anticipation, I raced out to my advisers—

Mr Corbell: I take a point of order, Mr Speaker. The minister has to speak to Mr Osborne's amendment.

MR SPEAKER: I uphold the point of order.

MR SMYTH: All right, Mr Speaker. There are no extra powers. Mr Rugendyke asked for a better process on master planning. I am willing to negotiate that with him. The government will support Mr Osborne's amendment.

Amendment agreed to.

Motion, as amended, agreed to.

Occupational Health and Safety Amendment Bill 2000 (No 4)

Debate resumed from 29 November 2000, on motion by **Mr Berry**:

> That this bill be agreed to in principle.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.38): Mr Speaker, it is a well-known fact that infringement notices, otherwise known as on-the-spot fines, can be a very useful tool to help ensure our workplaces are safe from injury and disease. With this in mind, in 1998 I asked the Occupational Health and Safety Council to advise me on the possibility of introducing on-the-spot fines for breaches under the OH&S Act. The use of on-the-spot fines within an appropriate compliance framework can be very effective indeed. The implementation of such a scheme requires compliance supportive strategies that go hand in hand with enforcement strategies.

However, the Occupational Health and Safety Council advised that only penalty provisions that do not require the exercise of judgment by the person issuing the fine are suitable for on-the-spot fines. The Occupational Health and Safety Council also provided advice on what possible breaches of the act met this criterion. Unfortunately, none of the sections of the act, except one, were found to be suitable for on-the-spot fines, as they all require the exercise of judgment to issue a fine.

Schedule 1 of Mr Berry's bill is a list of sections for which he proposes to issue on-the-spot fines. It is substantially the same as the list the Occupational Health and Safety Council has previously been advised would be unsuitable for on-the-spot fines. I table a comparison between the advice provided by the OH&S Council and schedule 1 of Mr Berry's bill, the 1998 legal advice from the Department of Justice and Community

Safety to the Occupational Health and Safety Council, and the year 2000 legal advice from the Government Solicitor's Office in relation to Mr Berry's bill. I present the following papers:

> Occupational Health and Safety Amendment Bill 2000 (No 4)—Facsimile copy of advice from the ACT Government Solicitor to Manager, Workplace Safety Policy, Industry Policy and Regulation Branch, Department of Urban Services, dated 20 December 2000.
>
> Occupational Health and Safety Act—Infringement notices for offences—Facsimile copy of advice from Director, Criminal Law and Justice to General Manager, ACT Workcover, dated 4 September 1998.

The current legislation does not lend itself to this best practice compliance model. Adding on-the-spot fines to the current inappropriate legislative framework in the piecemeal manner that Mr Berry proposes will not work.

It is only fair, if a reasonable excuse could be provided by the person to whom it is proposed to issue a fine, that the relevant evidence should be heard and the matter determined by a court, not by a WorkCover inspector. Let me give an example. Mr Berry's bill will enable on-the-spot fines to be issued for section 27 of the Occupational Health and Safety Act 1989. Section 27 (1) provides:

> An employer shall take all reasonably practicable steps to protect the health, safety and welfare at work of the employer's employees

Section 27 (2) provides that an employer will be guilty of the section 27 (1) offence if the employer fails to have regard to a number of matters, including the working environment, facilities for welfare at work, safety instruction, supervision, monitoring, and the availability of medical treatment.

The offence created by section 27 of the act is a general offence which is determined having regard to a number of variables. It requires the application of analysis and judgment, as opposed to mere observation, to determine whether the offence has been committed. Such offences are not appropriate for infringement notices. It is for the court to decide whether an employer has taken all reasonably practical steps to render a workplace safe, not a WorkCover inspector. Even police officers may issue infringement notices only in very limited circumstances where there can be no real argument that an offence has been committed. To do otherwise could lead to abuse of power and infringement of civil liberties.

A substantial review of the existing legislation is necessary before on-the-spot fines can be successfully implemented. On 28 February this year I released for public consultation the regulatory impact statement on the Occupational Health and Safety Act 1989 and related legislation. The RIS examined the rationale for the government's intervention in this area—problems with the current legislative regime and the cost of workplace accidents and disease borne by the community, industries and particularly workers. The RIS makes a number of important recommendations for legislative reform, including the recommendation to develop a fully integrated regulatory regime, for both workplace safety and dangerous goods, based on complementary duties of care.

The government is in the process of meeting with key stakeholders to canvass the many issues raised in the RIS. This process will facilitate the development of comprehensive safety legislation based on the best current research available from industry, academia, regulators and the community.

A key component in the development of a modern compliance-based regulatory regime will most likely be the introduction of on-the-spot fines that, unlike in Mr Berry's proposed amendments, are not dependent on the exercise of judgment by the person issuing the fine.

Mr Berry's bill will also alter the status of codes of practice made under the act. Presently codes serve as a guide. They do not provide a single method to be followed. If the bill is passed, it would allow them to be used as evidence of a breach of statutory duty of care. There are currently 22 codes of practice. They were not drafted with the intent of being de facto regulations and, as a result, are unsuitable for evidentiary purposes.

Mr Berry: You will have to fix it.

MR SMYTH: Mr Berry interjects, "You will just have to fix it." Again, he indicates the flaws in what he has put forward. He puts forward something that already, as he has just admitted, will need fixing. The codes of practice would require individual review and rewrite. This is not a task that can take place overnight.

It is interesting to note that when the Occupational Health and Safety Bill 1989 was originally presented to the Assembly—in fact, it was the first bill to be introduced into the Legislative Assembly—it had a clause that enabled codes of practice to be used in prosecutions as evidence of a failure to observe health and safety requirements.

The select committee's schedule of amendments recommended the omission of that clause, and the act was passed without it. I note that three members on the committee—Mr Wood, Mr Moore and Mr Stefaniak—are still serving in this place. It is clear that the Assembly did not at that time intend that there be mandatory compliance or otherwise with a code of practice or that the code should have evidentiary value to this extent.

Mr Berry has given my office some amendments, and I assume he still intends to move them. Mr Berry's bill, with its amendments, will also reduce the statutory limitation period for issuing summary proceedings, if liability is disputed, from 12 months to 60 days. Taking away or reducing statutory rights in this manner is an issue this government takes very seriously and approaches with extreme caution. Such an outcome may, in critical cases, result in the inability of the DPP to bring forward a prosecution, due to the expiration of the now very short statutory period of limitation. I find it most curious, given Mr Berry's other amendments to the OH&S Act, that he intends to take away statutory rights in this manner.

I have attempted to resolve the problems with this bill. Officers of my department met with Mr Berry on 31 January this year to discuss the issues raised by the bill. At that meeting Mr Berry was provided with a copy of the 1998 JACS advice and the year 2000 Government Solicitor's advice. Mr Berry indicated that he had not intended to restrict

the statutory limitation period for issuing summary proceedings if liability is disputed and that he would consider amending the bill to rectify that situation.

This government has already explored the possibility of introducing on-the-spot fines into the existing legislation. Our advice is that introducing on-the-spot fines under the current legislative framework will not work. This Assembly would most certainly call me to account if I ignored not one but two pieces of legal advice. But that is precisely what Mr Berry is doing with this bill. However, unlike Mr Berry, the government will not charge ahead and ignore the legal advice on the matter. Rather, we have commenced an extensive review and consultation process which will enable on-the-spot fines to be introduced within an appropriate framework.

WorkCover has conservatively estimated the total cost to implement these amendments to be $226,000. This does not include the cost of any court action that may be taken due to the discretionary nature of the fines. I hope members who support this bill have given some thought as to how its implementation will be paid for. I urge members not to support this bill but to wait for the conclusion of the extensive consultation that is under way in relation to the Occupational Health and Safety Act.

MS TUCKER (9.48): The Greens will be supporting this bill. Recent reports in the *Canberra Times* suggest that only half of all workplace accidents and incidents are reported. But apparently, if we believe business leaders and insurance companies, the cost of workers compensation is already blowing out across the country.

Ongoing rehabilitation, pay-outs for loss of income and pain and suffering, and inflated medical and legal costs are crippling the insurance industry. And the escalating workers compensation premiums that insurance companies are now forced to charge are driving businesses to the wall, we hear.

In consultations with various sections of the industry in regard to the workers compensation costs for group training companies, every key group emphasised the need to get WorkCover out there checking on work sites and making sure that this worrying number of accidents is brought down.

Obviously, on-the-spot fines will assist in providing a middle-ground strategy to encourage safe workplaces. They will be immediate and painful but not crippling. The group training companies argued the point about the number of claims and accidents. Nonetheless, they were supportive of on-the-spot fines and increased WorkCover presence at workplaces. They did point out that as soon as you keep an accurate record of the number of incidents, including the small incidents for which there will be no claim, insurance companies increase your premiums. So there is very clearly a disincentive on coming clean on the reality of the workplace.

The new workers compensation scheme, presently in the wings, might have some hope of moving things in the right directions: towards rehabilitation and a return to the work force for injured workers, speedy resolution of claims and a fairly comprehensive collection of data in respect of workplace incidents.

Substantial fines exist already for infringements of occupational health and safety regulations, on the one hand. As insurance becomes fine-tuned, there are also rewards of diminished premiums to employers with minimal claims history, on the other.

On-the-spot fines simply provide a middle ground for enforcement, a perverse incentive for WorkCover to get out in the workplaces to keep an eye on OH&S, and another level of information on workplace culture and safety.

I have paid some regard also to the amendments which Mr Berry is proposing to make to his bill. I note that public sector employers will also be held accountable for poor OH&S practices, in this case through reporting to the Legislative Assembly, so building in some pressure on government to address the issue.

I listened to Mr Smyth's argument. As I understand it, the question of discretion which he has put as a major obstacle, in his view, is not a problem at all. There is a similar situation in the Environment Protection Act and the Motor Traffic Act. As I understand it, Mr Berry's legislation is based on this model. So it appears that Mr Smyth's concerns are unfounded.

It was argued that the current statutory limitation of 12 months is going to be reduced to 60 days. I understand that that is dealt with through an amendment of Mr Berry's.

MR BERRY (9.52), in reply: As is usual, the government has come up with a whole lot of rhetoric and so-called reasons why this legislation will not work, but they have not come up with amendments to make it work, which suggests to me from the start that it will work.

In 1995 it was recommended by the Productivity Commission that the government introduce a system of on-the-spot fines. We are now in the year 2001 and there are no on-the-spot fines in the ACT. All we have had from this government, which I think was a stop-gap measure to use an excuse to head off this particular bill, is another review of the occupational health and safety legislation, which I understand there are many difficulties with. I think it was more by design to head this legislation off rather than to achieve on-the-spot fines as were recommended by the Productivity Commission in 1995. It was not until 1998 that the minister, as he says, bothered even to ask any questions about it. If this Assembly does nothing, you can bet that nothing will happen before the next election, and for some time after it there will be no on-the-spot fines in workplaces to prevent industrial accidents and to prevent workers compensation premiums from going up.

I have a range of amendments which I will refer to later. They cover all of the issues which Mr Smyth has referred to. I need to deal with them in the in-principle debate for a couple of reasons. Firstly, what Mr Smyth said in relation to the workability of this legislation is quite untrue. If you look at New South Wales, you will discover that similar flexibility is required of occupational health and safety officers when they come to making decisions in relation to breaches.

Let me try to draw an example to your attention. Under section 15 of the New South Wales Occupational Health and Safety Act penalties apply in relation to on-the-spot fines. This is set out in the Occupational Health and Safety Penalty Notices Regulation

1996, schedule 1. Section 15 of the Occupational Health and Safety Act in New South Wales reads as follows:

> 15 Employers to ensure health, safety and welfare of their employees
>
> (1) Every employer shall ensure the health, safety and welfare at work of all the employer's employees.

That is a similar message to what we see in the occupational health and safety legislation in the Australian Capital Territory. Let me give you the corresponding reference in the Australian Capital Territory legislation.

> An employer shall take all reasonably practicable steps to protect the health, safety and welfare at work of the employer's employees.

It has a familiar ring to it, hasn't it? The New South Wales act goes on to say:

> (2) Without prejudice to the generality of subsection (1), an employer contravenes that subsection if the employer fails:
>
> (a) to provide or maintain plant and systems of work that are safe and without risks to health ...

That provides a lot of discretion for inspectors. They have to assess whether or not plant and systems of work are safe and without risk to health. A lot of discretion has to be exercised by expert inspectors. These inspectors are not the same as parking inspectors, as an advice which was referred to me seemed to try to indicate. These people are highly trained occupational health and safety inspectors.

Under the New South Wales legislation employers are required to make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant and substances. That requires a significant exercise of discretion by the occupational health and safety inspectors when it comes to issuing a breach.

Employers are required to provide such information, instruction, training and supervision as may be necessary to ensure the health and safety at work of the employer's employees. That requires discretion from the occupational health and safety inspectors.

The claims that Mr Smyth makes are mythical when it comes to occupational health and safety. It may be the case when it comes to parking inspectors, when all a parking inspector has to do is see whether a parking meter has expired or not. But it is significantly different when it comes to the issue of occupational health and safety.

Mr Smyth correctly said that it is my intention to ensure that codes of practice become evidentiary in offences under sections 27, 28 and 29. That is completely true. It was intended that way. It was intended in the first legislation to have it that way, but it was withdrawn at an early moment. I know about that early legislation, because it was the first piece of legislation approved by this Assembly. I know about that. I was in the cabinet. Mr Wood was cabinet secretary, as I recall.

Mr Wood: Something like that.

MR BERRY: Something like that. Our memories are fading a little bit.

Mr Wood: Speak for yourself.

MR BERRY: Okay, I will speak for myself. The strong intent of the legislators in those days, because it was an introductory piece of legislation, was to make sure that a collaborative arrangement was engendered with the introduction of that legislation. It was important not to have people savaging the legislation and being fearful of it. So we tried for a collaborative approach. To some extent that has worked, but not well enough.

It is now time—and this has been exposed by the Productivity Commission's report—to come up with more punitive arrangements now that the legislation and the ethos in the workplace have developed to the extent they have. It is quite appropriate now to use non-compliance with codes of practice as evidence to be taken into account when an occupational health and safety officer is considering whether or not there has been a breach of the act. It is not the only matter to be taken into account. It is not intended to be exclusively used as a matter which occupational health and safety inspectors take into account when they are considering a breach under the legislation. Let me read it to you. The legislation says:

> An employer shall take all reasonably practicable steps to ensure that persons at or near a workplace under the employer's control, who are not the employer's employees, are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.

The amended section 28 I propose reads.

> In working out whether an employer has taken all reasonable steps to ensure that the employer has complied with subsection (1), regard may be had to all relevant matters, including for example—
>
> (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of the codes may be inspected or obtained; and
>
> (b) whether the codes have been complied with.

That is one set of issues that can be taken into account. It is not the only issue. Mr Smyth said the codes were never designed to be used as evidence. That is untrue. The act as it now stands allows employers to use compliance with the codes as a defence against a breach of the act. So it is untrue to say that they are not designed to be used as evidence. If they are not written well, that is your department's problem.

To see that the issue of discretion for inspectors was a quite appropriate option, we only have to look to the environment protection legislation of the Australian Capital Territory. Let me read to you a couple offences under the environment protection legislation.

> A person shall not cause run-off from the washing of a vehicle, equipment or other thing to enter the stormwater system, if the washing of the vehicle, equipment or other thing is in the course of, or incidental to, the carrying on of a commercial activity.

There is a bit of discretion for the inspector there, I would think. There are a few things to think about. I continue:

> A person shall not cause run-off from the washing of a vehicle, equipment or other thing on premises at which the vehicle, equipment or other thing is ordinarily kept to enter the stormwater system, if the washing is not in the course of, or incidental to, the carrying on of a commercial activity and there is, on those premises—
> (a) access to a grassed or gravelled area on which to wash the vehicle, equipment or other thing from which the run-off does not flow directly into the stormwater system; or
> (b) an area identified as one in which a vehicle, equipment or other thing may be washed.
>
> A person shall not cause any of the following substances to enter the stormwater system:
> (a) paint;
> (b) automotive fuels, oils or greases;
> (c) cooking fats or oils;
> (d) degreasers;
> (e) detergents;
> (f) animal wastes;
> (g) food wastes;
> (h) other waste.

There are a few things inspectors have to take into account if they are determining whether there has been an offence under that legislation. To say that the exercise of discretion is an enemy of on-the-spot fines is just bunkum. Discretion about the issue of on-the-spot fines is exercised all the time everywhere such fines are used. Whether or not to issue them is a discretion. Whether or not the case is black and white enough for them to be issued by the officers or officials who are exercising the right to issue on-the-spot fines is a discretion.

I think I have demolished that argument. We can forget it and leave it in the past. It is quite clear that discretion is exercised in other occupational health and safety jurisdictions. It is clear that discretion is exercised even in our own jurisdiction on other matters. This regime of on-the-spot fines is drawn from the same model as was used to develop the Road Transport (Offences) Regulations 2000 and, as I have said, it is consistent with the approach of the New South Wales occupation health and safety law.

Mr Speaker, this legislation is designed to start something that should have been started ages ago. In 1995 the Productivity Commission said that we should move down this path, and it has taken us this long to get there—and only because it has been brought up by non-executive members of this Assembly and is being supported by non-executive members of this Assembly.

I am a bit reluctant to go through all of the amendments I propose, because if I do I will have to do it twice, but some of them were mentioned in the course of Mr Smyth's contribution to the debate, so I will go through them. Mr Smyth is correct when he says the department came to me to seek some clarification of what we were on about. I will go through some of the expressions of concern.

The department expressed concern that the bill allows for discretion on the part of WorkCover inspectors. I have explained that. I do not need to go any further on that. *(Extension of time granted.)* I do not propose any amendments in respect of that. It is a nonsense argument and should not be contemplated.

In relation to section 27 of the act, "Duties of employers in relation to employees", section 28, "Duty of employers in relation to third parties", and section 29, "Duties of persons in control of workplaces", I propose to enter a reference to section 34. Section 34 of the act as it now stands is entitled "Duties of persons erecting or installing plant in a workplace". It was drawn to my attention that section 34 did not make the same references as other parts of the legislation did in relation to the performance of employers and third parties. For the sake of standardisation or consistency, I intend to include in section 34 the standard provision:

> In working out whether a person has taken all reasonably practicable steps to comply with subsection (1), regard may be had to all relevant matters, including for example—
>
> (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information ...

This is the same approach as I have taken in relation to sections 27, 28 and 29. I thank departmental officers for drawing that to my attention. That will be a useful addition to the legislation.

The department raised questions about perceived ambiguity in the drafting in relation to the codes of practice as guidance for persons in control of workplaces, section 87. Mr Speaker, you will find amongst the amendments which have been circulated to the members an amendment to section 87 to accommodate that difficulty.

I have also included a new section 75 amongst those amendments to ensure no ambiguity can arise in relation to the definition of an infringement notice. This amendment clarifies which acts are affected—namely, those acts which come under the Occupational Health and Safety Act. It clarifies that issue.

The scrutiny of bills committee looked at this legislation and recommended a change to proposed new section 75K. An amendment has been drafted to fix that problem. It is amongst the amendments which have been circulated.

The department raised a concern that the bill might operate to prevent a prosecution under the act, and there are also issues about allowing sufficient time for gathering evidence. Mr Smyth raised this in his contribution to the debate earlier. I have had amendments drafted to proposed new section 75J to overcome these problems. All of the problems have been fixed.

Consultation with unions raised the differences in the effect of the bill in relation to public and private sector employers, because there was not any provision to issue notices to public sector employers. To ensure that public sector employers are held accountable for poor occupational health and safety practices, I have had an amendment drafted to require the commission to report to the Assembly any breaches by ACT public sector employers.

The picture has been completed with the amendments that have been circulated. I do not think I need to say anything more. I have covered all of the questions that Mr Smyth has raised. I urge members to support the bill in principle. I will deal with the amendments in due course.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 9		Noes 6	
Mr Berry	Mr Rugendyke	Mrs Burke	Mr Stefaniak
Mr Corbell	Mr Stanhope	Mr Cornwell	
Mr Hargreaves	Ms Tucker	Mr Humphries	
Mr Kaine	Mr Wood	Mr Moore	
Mr Osborne		Mr Smyth	

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR BERRY (10:15): Mr Speaker, I seek leave to move the six amendments circulated in my name together.

Leave granted.

MR BERRY: Mr Speaker, I move the amendments circulated in my name *[see schedule 1 at page 1117]*. In doing so, I would draw members' attention to a very small amendment on page 3 of the circulated amendments. They will see a hand-written note changing "the notice" to "notices".

I have been through all of the issues which are addressed in these amendments. For the sake of members' sanity, I will not go through them again. Unless members raise issues, I will leave it at that.

Amendments agreed to.

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

Bill, as amended, agreed to.

Adjournment
Ms Margaret Hendry

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10:17): Mr Speaker, I move:

> That the Assembly do now adjourn.

I take the opportunity to bring to the attention of members the passing of Ms Margaret Janet Hendry, a long-serving member of the ACT Heritage Council. I thank members for the consideration that allowed me to attend her thanksgiving service this morning. It would not be a word of a lie to say that Margaret Hendry was a great woman. If we, in our endeavours here, are ever to achieve as much as she did, we will have to lift our collective game.

Margaret Janet Hendry was a landscape architect. She graduated from Burnley Horticultural College in 1948—very unusual for a woman at that time—and completed a diploma in landscape design at the Kings College, Durham University in the late 1950s. From 1963 to 1974 Margaret was employed by the National Capital Development Commission to work on the landscape development of Canberra as a garden city.

In 1963 she undertook the role of honorary secretary to the provisional council to form the Australian Institute of Landscape Architects. She was a fellow of the Landscape Institute and the Australian Institute of Landscape Architects.

Margaret was an inaugural senior lecturer in landscape architecture at the University of Canberra, at that stage the CCAE, for a period of 11 years. In 1983 she was chairperson for the selection of the inaugural award in landscape architecture and in 1986 was the chairperson and jury member for the first national awards programs for design excellence in landscape architecture.

From 1989 to 1990 Margaret was a member of the committee to establish the Friends of the Australian National Botanic Gardens. In 1991 she was a member of the National Capital Planning Authority committee on the trees in the parliamentary zone. In addition, Margaret presented a paper at the Australian Garden Historical Society conference in the mid-1990s on the landscape development for the parliamentary area.

Margaret was a jury member for the competition of ideas for the Kingston foreshore development. In the late 1990s she was appointed a member of nomenclature committee assessing proposed names for suburbs and streets in the ACT. She was also appointed a member to the Heritage Council from 21 November 1997 to 20 November 2000. She was a dedicated member of the Heritage Council. She attended meetings, seminars, workshops and site visits with both government and non-government organisations, and she also represented council at numerous events during the annual ACT Heritage Festival.

As a member of the Heritage Council, Margaret made a significant contribution to a range of task forces, including those responsible for the assessment of applications for the annual ACT heritage grants, the assessment of nominations for the ACT heritage

awards, and in particular the assessment of development applications for proposed works in heritage places.

Margaret cast her net wide. I table the service of thanksgiving. It says:

> To attempt to record the extent of Margaret's involvement in the wider community is impossible, for she did so much behind the scenes. She had views on everything from girl guides to gardens, hospital-food to how Scripture should be read in church. She felt so strongly about the latter that she wrote a book to instruct Lectors on how best to approach their tasks.

I present the following paper:

> Service of Thanksgiving for the life of Margaret Janet Hendry OAM—11 May 1930–20 March 2001.

The ACT is the lesser for her passing. She was a wonderful member of council. She was an advocate in landscape design for almost 40 years. The thanksgiving document also says:

> Over the years, Margaret was an active member and President of the Soroptimist Club in Canberra; President of the NSW Division of the Business and Professional Women's Clubs; a member of the Women's Advisory Board to the NSW Government and under Premiers Lewis & Wran she worked hard to improve the status and dignity of women and lobbied for many issues from equal pay for women to equal legal rights for step-children.

She was a great women and somebody that we should always remember in this place.

Members staff—log of claims

MR STANHOPE (Leader of the Opposition) (10.21): Mr Speaker, for the record, I would like to clarify some remarks made by the Chief Minister in question time today in answer to a question from Mrs Burke. The question, the nature of which I do not entirely remember, was designed to allow the Chief Minister to rail against an ambit claim made by the Media, Entertainment and Arts Alliance on behalf of members of staff in this place. It seemed to be significant to Mrs Burke and the Chief Minister that the ACT secretary of the Media, Entertainment and Arts Alliance is a member of my staff. As I understand it, the purpose of the question was to seek to embarrass me or the Labor Party as a result of a log of claims lodged by the Media, Entertainment and Arts Alliance on behalf of members of staff of the Assembly, on the basis that the secretary of that union is on my staff. I regard it as quite an appalling political gesture by the Liberal Party to seek to attack me as a politician through my staff.

The Chief Minister, in his answer, also misunderstood entirely the nature of industrial claims and ambit claims. There is a very recent High Court decision on the nature of logs of claim and ambit claims. For the sake of the record, I would like to inform members about the nature of ambit claims in industrial relations these days. In case No B 2 of 1996 the full court of the High Court handed down its decision on 5 August 1997 clarified. The Chief Minister perhaps needs to understand and reflect on this decision. He obviously was not aware of it when he sought to answer the question today. The decision

clarified the doctrine of ambit for the purposes of attracting the jurisdiction of the Australian Industrial Relations Commission in relation to the prevention and settlement of industrial disputes. The High Court found that an industrial dispute created by the service and rejection of a log of claims, in that particular case by ambulance service employers, was valid.

I raise that case because it goes on to discuss the use of ambit. Ambit, of course, is the range between the claim and the response to the claim. It is a common tool. It is used around the nation in relation to industrial relations. It is a common tool to ensure that unions serving a log of claims have as large a range as possible.

A log of claims is commonly extravagant or exaggerated. Everybody in the world knows this.

Mr Stefaniak: That one was extravagant.

MR STANHOPE: You know about these things, Bill, and you know it was a very cheap and nasty shot. A log of claims is commonly extravagant or exaggerated to ensure there is a wide ambit in which the parties to a dispute may operate. That is the purpose of it. This is primarily because the service of a log of claims is an expensive and time-consuming exercise which unions do not like to frequently repeat. The service and refusal of a log of claims is the main method of establishing the existence of an industrial dispute. That is why it is done. That is why unions use ambits. That is why all unions in Australia use ambit claims.

It is necessary that there be an industrial dispute, to allow both the resolution of the dispute and the making and varying of federal awards by the AIRC. The AIRC's jurisdiction is constitutionally limited—Bill would remember this from constitutional law—to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limit of any one state. The existence of an industrial dispute only requires that a demand be made by one party and refused by the other.

There is a lot more in this judgment from the High Court. It is very interesting, and it would perhaps be useful for the Chief Minister to seek to understand the nature of industrial relations law in Australia. We have discovered over the last few weeks that the minister for health understands nothing about industrial relations or the settling of disputes.

When the log of claims was lodged in the AIRC last November by the Media, Entertainment and Arts Alliance, in part on behalf of members of staff of this place, the ACT government was of course represented. The Chief Minister was represented in the commission on that day. Did the Chief Minister's representative object to the log of claims, to the ambit claims? Of course he did not. It was lodged last November, and the ACT government lodged no objection to the nature of the claim. I make that point to highlight the fact that this really was an incredibly low attack, or a purported attack, on me and my colleagues in the Labor Party through a member of my staff. I think in this place there is nothing lower than that.

Occupational health and safety legislation

MR BERRY (10.26): During my speech on the Occupational Health and Safety Bill I omitted to thank people from the Parliamentary Counsel's Office who assisted me in the drafting of the legislation to ensure that it conformed with the legal norms. I thank them for their expeditious dealing with the request, and for dealing with the requests that arose out of consultation with the department and other consultation.

I also thank members who supported the legislation. This will not be the last example of on-the-spot fines for this sort of thing. I note that the government is doing a review of the legislation, and I expect at some time in the future we will see something arising from that, but for the moment I think this is a sound step forward and one which will be welcomed by many workers in the community.

Proposed policies for residential development and proposed Code of Residential Development

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.26), in reply: Mr Corbell, in closing the debate on his motion today, said that the government did not have a definition of streetscape and that that this was sloppy of the government. In fact, it was sloppy of Mr Corbell, because if he goes to page 29 of appendix VI of the Territory Plan of course he will find, lo and behold, a definition of streetscape. Just so he knows what it means, I will read it:

> **Streetscape** includes the visible components within a street (or part of a street) including the private land between facing *buildings*, including the form of *buildings*, treatment of *setbacks*, fencing, existing trees, landscaping, driveway and street layout and surfaces, utility services and street furniture such as lighting, *signs*, barriers and bus shelters.

It is quite a nice definition of streetscape.

Mr Berry: I knew that. He knows that.

MR SMYTH: If you knew that, why did he say we did not have a definition?

On a more important issue, I have just received advice from officials from the department on the motion, as amended, regarding ACTCode. It starts with the line:

> That the Assembly directs the ACT Government to not proceed with the release of the *Proposed Policies* ...

I have a note here that says I will need to take advice on whether the Assembly can give the direction it has given to the ACT government, on the basis that it is the Planning Authority and not the minister that is empowered to notify plan variations.

The second dilemma is that the gazette process started about a week ago and the gazettes are already at the printers. I have asked that they be intercepted in the morning and not be issued until such time as this is clarified, so that it does not come as a surprise in the morning. I have just been handed this advice. We will endeavour to resolve the dilemma in the morning.

Question resolved in the affirmative.

Assembly adjourned at 10.29 pm

Schedule of amendments

Schedule 1

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2000 (NO 4)

Amendments circulated by Mr Berry

1
Proposed new clause 7A
Page 5, line 7—

After clause 7, insert the following new clause:

7A **Duties of persons erecting or installing plant in a workplace**
Section 34 is amended—
(a) by omitting 'A person' and substituting **'(1)** A person'; and
(b) by adding at the end the following subsection:
"(2) In working out whether a person has taken all reasonably practicable steps to comply with subsection (1), regard may be had to all relevant matters, including for example—
(a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of codes may be inspected or obtained; and
(b) whether the codes have been complied with.
"(3) This section does not limit section 35.".

2
Clause 8
Proposed new section 75
Definition of *infringement notice offence*
Page 6, line 11—

Omit "an offence", substitute "an offence against this Act or an associated law".

3
Clause 8
Proposed new section 75J (2) (c)
Page 12, line 9—

After proposed new paragraph (2) (b), insert the following new paragraph:
(c) the person has disputed liability for the infringement notice offence.

4
Clause 8
Proposed new section 75K (1)
Page 12, line 29—

Omit "or 75J", substitute ", 75J (Withdrawal of infringement notice) or 75P (Extension of time to dispute liability)".

5
Clause 8
Proposed new sections 75QA and 75QB Page 17, line 13—

Before proposed new section 75R, insert the following new sections in division 5A.5:

"75QA Issue of notices of noncompliance

"(1) If an authorised person could serve an infringement notice on a person under section 75C (1) (Service of infringement notices) if the person were not the Territory or an agent of the Territory, the authorised officer may serve a notice of noncompliance on the person.

"(2) In this section:

agent, of the Territory, includes—

(a) an instrumentality, officer or employee of the Territory; and

(b) a contractor or someone else who exercises a function on behalf of the Territory.

"75QB Report about notices of noncompliance

"(1) Within 14 days after the end of each financial year, the commissioner must give the Minister a report about notices of noncompliance (if any) served under section 75QA in that year.

"(2) The Minister must give a copy of each report under subsection (1) to the relevant committee of the Legislative Assembly within 14 days after receiving the report.

"(3) In subsection (2):

relevant committee, of the Legislative Assembly, means—

(a) the standing committee of the Legislative Assembly nominated by the Speaker for subsection (2); or

(b) if there is no nomination under paragraph (a)—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

6
Proposed new clause 8A
Page 18, line 19—

After clause 8, insert the following new clause:

8A Codes of practice

Section 87 (1) is amended by omitting "to employers, self-employed persons and employees" and substituting "for this Act".