DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

15 June 2001

Friday, 15 June 2001

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The Assembly met at 10.30 am.

(Quorum formed.)

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

Duties Amendment Bill 2001 (No 2)

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

Title read by Clerk.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (10.33): I move:

> That this bill be agreed to in principle.

I ask leave for leave to have my presentation speech incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> Mr Speaker, since the introduction of the *Duties Act 1999* on 1 March 1999 both NSW and the ACT have encountered some difficulties with its operation.
>
> The Duties Amendment Bill 2001 (No 2) will amend the Duties Act to address a number of issues that have arisen within the ACT and, where appropriate, adopt a number of changes made in NSW legislation.
>
> This Bill will exempt the Territory from duty under the Duties Act. However, statutory authorities and other bodies involved in commercial activities in competition with private sector businesses will be made liable to duty. This is in line with the Government's Competitive Neutrality policy and National Competition Policy principles and will facilitate transparency and accountability.
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> Mr Speaker, these amendments will allow the Minister to determine which entitles and functions will be subject to duty. The determination will be a disallowable instrument under the *Legislation Act 2001*.
>
> Mr Speaker, this Bill also increases the current threshold in the Duties Act for "leases" (other than franchise arrangements) from $3,000 per annum to $10,000 per annum. This will reduce the administrative burden on Government and business by removing the requirement for lessors to lodge and pay small amounts of duty on low value leases and licences.

Currently, the Duties Act imposes duty on leases based on the lease cost, that is, rent payable under the lease, plus certain other specific payments. For long term leases over 30 years, the rate of duty is currently imposed at the same rate as that applying to a transfer of a Crown Lease. This is to discourage the use of long term leases as a pseudo transfer of the Crown Lease.

However, there have been several cases of long-term leases where the lease cost was significantly less than the value of the Crown Lease. This has resulted in the revenue collected being significantly less than that which would be payable if the land itself had been transferred. To overcome this, the Bill will amend the Duties Act to impose duty on long term leases based on the greater of the cost of the lease or the unencumbered value of the Crown Lease.

In addition, to prevent leases less than 30 years being issued at nominal cost to reduce duty liability, they will now be assessed on the greater of the cost or value of the lease. These changes will not apply to franchise arrangements.

Mr Speaker, under the *Taxation Administration Act 1999* (Taxation Administration Act) the Commissioner for ACT Revenue may appoint agents to facilitate the lodgement of documents and payments of tax. Approved agents of the Commissioner will be able to process simple documents and pay the assessed duty by monthly return. Transactions agents may be given approval for include conveyances, leases, licenses and franchise agreements between unrelated parties. Many of these transactions currently incur $20 duty to cover processing costs.

Mr Speaker, this Bill will amend the Duties Act so that, where an approval is granted by the Commissioner in accordance with the Taxation Administration Act, and duty is collected by an approved agent, the taxpayer will not be required to pay the concessional duty of $20. Where the ad valorem duty is less than $20, the ad valorem duty will apply.

Mr Speaker, the vesting of property by court order or statute has, in many instances, circumvented the Duties Act and avoided the payment of duty that would have been paid had the property been transferred. To stop the vesting of property being used as a means of avoiding duty, this Bill expands the meaning of ‘transfer’ to include vesting, whether by statute or court order. This only applies to the vesting of an existing interest in property, and not to the creation of a new interest.

Mr Speaker, the Commonwealth’s Financial Sector (Transfers of Business) Act 1999 (Financial Sector Act) provides for the transfer of assets and liabilities between Authorised Deposit-taking Institutions (ADIs) and is administered by the Australian Prudential Regulation Authority (APRA). ADIs are specified by the Commonwealth’s Banking Act 1959 and can be banks, credit unions, insurance companies, superannuation funds etc. Transfers of assets and liabilities can be voluntary or compulsory, and total or partial. Section 22 of the Financial Sector Act allows the transfer of assets and liabilities from one ADI to a receiving body ADI ‘without any transfer, conveyance or assignment’. The effect of this provision is that duty cannot be assessed on the transaction.

Mr Speaker, this Bill will amend the Duties Act to require receiving bodies, to whom property is voluntarily transferred under the Financial Sector Act, to lodge a statement with the Commissioner. Duty will be payable based on the value of

the property transferred unless the transaction falls into a class exempted from duty under guidelines determined by the Minister.

Mr Speaker, briefly, this Bill will also provide for:

• concessional duty on certain landrich transactions involving trustees, custodians and nominees where there is no change in the beneficial ownership of the property concerned. This will bring the Duties Act in line with NSW and Victorian legislation;
• the extension of relief from duty for corporate reconstructions to landrich companies. In line with government policy for corporate reconstructions, relief is currently provided by waiver. This amendment will reduce the administrative costs involved in processing waivers and provide certainty to the taxpayer;
• to exempt landrich private corporations from duty under part 3 chapter 3 where the corporation would be liable to duty under both parts 2 and 3 of chapter 3 on the same transaction; and
• clarification of the obligations of those organisations granting and issuing Crown leases on behalf of the Government.

Mr Speaker, this opportunity will also be taken to make general housekeeping and editorial changes in accordance with the Legislation Act 2001, which will also ensure internal consistency within the Duties Act.

In conclusion, Mr Speaker, the changes brought about by this Bill will help the ACT maintain consistency with the corresponding NSW legislation, and where practicable ensure ACT taxpayers are not disadvantaged compared to their NSW counterparts. They will also provide benefits to Government administrations adversely affected by the introduction of the Duties Act, maintain equity in the imposition of duty, capture previously non-dutiable transactions, and ensure the consistent treatment of private and public corporations.

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

Workers Compensation Amendment Bill 2001

Mr Smyth, pursuant to notice, presented the bill, its explanatory memorandum and an exposure draft of the Workers Compensation Regulations 2002.

Title read by Clerk.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.34): Mr Speaker, this legislation builds on the exposure draft bill that I tabled in December 2000 and on which the government has undertaken extensive consultation with stakeholders and the community. Members may recall that the exposure draft legislation represented the first significant review of this act since its commencement in 1951. By any measure, the current act is dated and in need of substantial overhaul.

The government's exposure draft embodied a range of very important initiatives. They were all designed to get injured workers well, rehabilitated and back to work in a speedy but durable fashion. They sought to remove the pot of gold mentality among

some sectors of the community while acknowledging that injured workers should not be consigned to poverty as some of them are under the current arrangements.

I take this opportunity to remind members of the key features of the exposure draft legislation. They were:

- Employers, insurers, treatment providers and the injured worker must participate in an injury management plan, with new requirements relating to the early reporting, actioning and decision-making on claims;

- Statutory benefits for workers injured for periods greater than 26 weeks increased from being the lowest in the country to a responsible level that does not leave them in poverty;

- Insurance companies able to offer employers innovative insurance policies, subject to minimum requirements, rather than the mandatory inflexible arrangements currently prevailing;

- Insurers required to take a more proactive role in the treatment, rehabilitation, and return to work of injured workers;

- Insurers to demonstrate that they have effective cost containment measures in place in relation to medical, rehabilitation, and legal services to maintain their approval to operate in the ACT;

- New requirements for the approval of the various service providers involved in injury management rehabilitation as well as brokers and agents; and

- Continued unfettered access to common law but with streamlined processes leading to early directions being given by the court and the option for court-directed mediation.

Mr Speaker, when tabling the exposure draft legislation I commented that every jurisdiction in Australia and around the world constantly grapples with the competing objectives of workers compensation arrangements. On the one hand the arrangements must ensure that injured workers are properly treated, supported and remunerated, while on the other hand the costs of the schemes need to be kept reasonable and affordable for business.

The comprehensive consultation process that the government has undertaken on the exposure draft legislation revealed that some further work was needed in the area of scheme cost. Insurers and business groups demonstrated that the many benefits that the new approach would bring could be quickly outweighed in several key areas, resulting in overall cost increases. At a time of rising costs, it was clear that changes were required.

Without altering the fundamental changes that the draft legislation flagged as the government's intended reforms, we have modified the draft legislation in several key areas to address the matter of cost. I will now deal with the key changes.

The period from the date of injury within which a claim is to be commenced at common law for damages has been reduced to three years from six years. This brings the ACT into line with all other common law jurisdictions and, according to the Insurance Council of Australia, will provide greater certainty in actuarial analysis of future liabilities which in turn will ease pressure on premiums.

The accessibility of lump sum payments under the table of maims is restricted so that they are paid only after the injured worker has returned to work for at least three months or after the expiration of two years from the date of injury, whichever occurs sooner. For those workers who have suffered a traumatic injury where return to work is clearly unlikely, then the lump sum payment remains available immediately. This change will further encourage injured workers to seek an early return to work to access the lump sum payment, thereby reducing the costs that are sometimes currently incurred should the injured worker not have incentive to complete rehabilitation.

The draft legislation proposed that the insurer have a maximum period of three months within which to accept or reject a claim. However, should the insurer reject the claim at any point in this period, they could not recover the costs incurred to that point. The current period for decision-making is 21 days. Insurers indicated that this change would adversely affect premiums as the actuaries view the extended period as an opportunity for costs to accumulate substantially without the ability to recover them should liability be denied. As a consequence, the period for decision-making has been reduced to 28 days, in accordance with the ICA's expressed preference.

To ensure balance in this arrangement, if insurers seek to terminate a claim after the 28-day period but within the first 12 months they must provide the injured worker with their reasons for termination in the form of an affidavit. Any costs incurred by the insurer up to this point cannot be recovered from the injured worker. Beyond 12 months, the matter must come before a court prior to termination.

Insurers supported the draft legislation's approach to the early reporting of injuries. However, they noted that the penalties applying to employers for failing to advise the insurer of an injury within 48 hours of its occurrence were of no consequence. Experience in other jurisdictions shows that employers are very poor at timely reporting. In response, the legislation now provides that the employer is liable for the injured worker's salary cost for the period after the initial 48 hours until notification to the insurer is effected.

The requirement for employers to report salary and wage details quarterly was in response to the findings of the Assembly select committee. Insurers have advocated that the amount of data to be provided would serve only to increase their administrative costs for no real premium or coverage benefits. Business also strongly objected to this, especially as the Commonwealth government has moved to change the requirement for the quarterly business activity statements to be provided to the Tax Office, which would have been the basis for the workers compensation returns. Instead, the legislation now provides for reporting by business on a six-monthly basis.

Mr Speaker, the government is confident that this package, which has benefited from extensive consultation, now strikes the right balance for all involved. It treats injured workers fairly by requiring early action by employers and insurers to restore their

health and return them to work while providing decent statutory weekly and injury benefits. The option of pursuing common law action in cases of alleged negligence remains.

For insurers and employers, steps have been taken to reduce costs by streamlining processes, removing unnecessary bureaucratic requirements and strengthening provisions to prevent exploitation of the system.

Members will note that the regulations being presented today comprise all those that are necessary to commence the new arrangements. However, there are further regulations which need to be made to complete the package. These remaining regulations will be developed over the coming months in consultation with the relevant stakeholders. I anticipate that these will be finalised and tabled before the commencement of the new arrangements.

Once members have had the opportunity to examine this legislation, I am sure they will agree that it is complex. The government has expended a great deal of effort in working with stakeholders to achieve a mutual understanding of the provisions and their effects. As I did with the exposure draft legislation, I offer all members the opportunity to be briefed by officials of my department on this legislation.

Mr Speaker, overhauling the workers compensation arrangements in the territory is long overdue. The government has now concluded a very lengthy and intensive process which has resulted in the balanced documents that I table here today. I commend the bill and regulations to members and encourage your support for them. I move:

> That this bill be agreed to in principle.

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

Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2001

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

Title read by Clerk.

MR STEFANIAK (Minister for Education and Attorney-General) (10.44): I move:

> That this bill be agreed to in principle.

I seek leave to have my speech incorporated in *Hansard.*

Leave granted.

The speech read as follows:

Mr Speaker, I present the Classification (Publications, Films and Computer Games (Enforcement) (Amendment) Bill 2001. The Bill implements changes to the revised national cooperative censorship scheme through amendments to the *Classification (Publications, Films and Computer Games) Act 1995.*

The national scheme has been in place since January 1996. It is underpinned by the Commonwealth's *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* under which products are classification decisions to be enforced throughout Australia.

As with any new legislative scheme, experience has revealed the need for a number of technical and other changes to improve its operation. Some of these changes will be effected entirely at Commonwealth level upon commencement of the *Classification (Publications, Films and Computer Games) Amendment Act 2001 (Cth*). Those that require amendments to State and Territory legislation are based on model legislative provisions agreed to by Censorship Ministers.

Most of the Bill's provisions are necessary to take account of changes to the Commonwealth Act. For example:

The Commonwealth Act has been amended to clarify and extend the range of films and computer games which may be exempted from classification. These are typically products with limited market appeal. As the cost of classification services has a disproportionate impact on these products, this ensures their continued availability on the Australian market. Products can only be exempted if they are suitable for general consumption and fall within a specialist category, such as:

- business, accounting, professional, scientific and educational films and software, which already fall outside the coverage of the classification scheme, or
- religious, hobbyist, family, live musical and sporting films, which will be added to the list of exempt products.

The Bill ensures that dealings in these exempted products do not constitute an offence, as would otherwise be the case.

Amendments to the Commonwealth Act allow certain adult publications to receive a Category 1 Restricted classification provided they are wrapped in an opaque package prior to display or sale. This is relevant where a publication would only exceed this classification because of the stringent criteria that apply to publication covers.

Amendments to the Commonwealth Act will also allow certain publications to receive an Unrestricted classification on condition that they are sold or displayed for sale in a sealed package. This aims to prevent young children from accessing publications which might not be suitable for them, even though they might be suitable for older children and adults.

The Bill takes account of these changes, again at enforcement level.

The Bill will exclude aircraft on international flights from provisions of the principal Act that would presently apply to in-flight entertainment. This acknowledges the regulatory difficulties that arise when carriers spend only a small proportion of any journey within Australian airspace. As a carrier enters

or exits Australia, it may also pass through the jurisdiction of a number of States and Territories, making effective enforcement of classification requirements untenable.

International carriers transiting Australian airspace are most likely to commit an offence by:

- screening new release films which, though entirely fit for general consumption, have yet to be classified in Australia; or
- screening classified films which have been edited to correspond with the length of a journey.

As international carriers have their own classification systems in place, the implications of any breaches are unlikely to be serious in terms of exposing passengers—particularly children—to unsuitable entertainment. Exempting international carriers from classification requirements during the relatively short period they spend in Australian territory will, therefore, in no way undermine the integrity of the national scheme.

Existing classification requirements will continue to apply on domestic flights.

The Bill will remove the requirement that Category 1 Restricted publications be sold in a sealed package, provided that sale or delivery occurs in a restricted publications area. This is considered appropriate given that minors cannot enter or see into the interior of these premises.

Under the present scheme, computer games cannot be sold unless they bear appropriate markings and consumer advice. The Bill sensibly extends this requirement to computer games which are made available on a "pay and play" basis, such as arcade games.

The Bill contains a number of further provisions which will allow minor and more technical amendments to the Commonwealth Act to be enforced.

Schedule 1 to Bill also contains amendments that alter the style of the principal Act, which reflect an ongoing process by the Parliamentary Counsel's Office to modernise the layout and language of all ACT statutes.

I commend the Bill to the Assembly.

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

Crimes Legislation Amendment Bill 2001

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

Title read by Clerk

MR STEFANIAK (Minister for Education and Attorney-General) (10.45): Mr Speaker, today I am pleased to present the Crimes Legislation Amendment Bill 2001. This bill will greatly assist in the fight against crime in this territory. It amends a number of acts dealing with law enforcement and the criminal justice system to enable that they operate more effectively.

I established a working party on crime legislation earlier this year to develop recommendations to improve the response to crime in the ACT. It was chaired by the Director of the Criminal Law and Justice Group of my department and included representatives from the Australian Federal Police, the Australian Federal Police Association and the Director of Public Prosecutions, together with representatives from my office and that of the Minister for Police and Emergency Services.

The working party did a very good job in a fairly brief time and identified several areas of territory legislation in need of reform. It has recommended legislative amendments so that police and the DPP can perform their law enforcement functions more effectively. I fully support the working party's recommendations, which have been carefully considered by the government in developing this bill. I am confident that the recommendations will go a long way to making our community a safer place.

If we are to be serious about assisting the police and the prosecution authorities in prosecuting crime in the territory, they need to have the legislative tools to do the job. I think we are lucky in this territory in having a police force that is regarded as the best in the country, but it is very hard for them to fulfil their full potential if they have to operate with legislative constraints that effectively mean, in some instances, that they are operating with one hand tied behind their back. I think they need every reasonable support we can give them, and this bill, I think, does that.

The bill is not about making it easier for enforcement authorities to secure convictions at any cost, however. The government's primary concern is to ensure that the guilty are held accountable for their crimes, not the innocent. It serves no-one other than the actual perpetrator if the wrong person is convicted while the guilty party walks free. Accordingly, the bill contains several new provisions intended to ensure that miscarriages of justice can be remedied, and possibly avoided. These measures include a new mechanism for holding inquiries into convictions, a limited right to review acquittals resulting from errors by the trial judge, and enhanced rights and protections for persons suspected of committing summary offences.

Turning now to the detail of the bill, it is divided into 10 parts which amend a range of legislation dealing with criminal law in the territory. Part 1 deals with formal matters, including commencement.

Part 2 of the bill contains three proposed amendments to the Children and Young People Act 1999. The first of these is purely technical in nature and will reduce the administrative burden on the AFP by altering the definition of "authorised officer" so as to minimise the need for formal written instruments of authorisation. The second amendment to this act is linked to an amendment to the Crimes Act of 1900, which I will discuss later, to allow for routine fingerprinting and/or photographing of suspects over the age of 16 who are in lawful custody for an offence. The third amendment ensures that identifying material taken from a young suspect must be destroyed if that young suspect is cleared or no prosecutorial action is taken within a certain time. This will ensure that young suspects are afforded the same protection as older suspects in terms of the destruction of such material.

In 1998 this Assembly passed the Crime Prevention Powers Act of 1998 to reinstate move-on powers, which I think I originally introduced back in 1989. Part 3 of this bill amends that act to enable police to direct a person to move on by a specified route. It also allows police to order that a person stay away from the area for a specified period. These additional powers will help minimise possible conflict between groups or individuals by keeping them apart while tempers cool down.

Part 4 of the bill contains a range of amendments to the Crimes Act of 1900, dealing with property offences, the rights of accused persons and investigatory powers of the police.

Home invasions are a growing concern in our community. Most of us who have either grown up in Canberra or have lived here for many years are used to thinking of our homes as places of safety. We almost take that feeling for granted. Home invasions shatter that belief in the home as a place of safety. Given the devastating impact of home invasions, it is appropriate that the law recognises the seriousness of this type of offence.

Accordingly, clause 12 of the bill amends the Crimes Act to ensure that home invasion situations are adequately dealt with under ACT law and a sufficiently tough penalty is available where a home invasion is committed. At present the problem is that home invasions are essentially dealt with by relying on the burglary provisions. However, a person who enters someone's home as a trespasser is only guilty of burglary if the person enters with the intention of doing one of three things—steal property, cause damage such that the penalty for the offence would be five years imprisonment, or commit an assault which would attract a penalty of five years imprisonment. That is an assault occasioning actual bodily harm, or grievous bodily harm, but not a common assault which only attracts a penalty of two years imprisonment. This means that if a person trespasses in someone's home intending to commit only a common assault, the burglary offence is not able to be made out, because the penalty for common assault is a maximum of two years imprisonment.

The government takes the view that it is unacceptable that an offender should be able to terrorise persons in their home by threatening them with assault and/or inflicting a physical assault, albeit at the lower end of the scale, and be liable to only a common assault charge and no more than two years imprisonment. The change made to the burglary offence will mean that any assault committed by a trespasser will amount to burglary, and the penalty provision for burglary will apply. That is, the offender will be liable to imprisonment for up to 14 years.

Clause 13 of the bill inserts new section 107A of the Crimes Act 1900 which re-establishes in the ACT an offence of presenting a valueless cheque. The former Police Offences Ordinance of 1930 contained an equivalent provision, which was apparently repealed in 1985 for reasons which are not recorded. Most Australian jurisdictions have an equivalent provision dealing with valueless cheques.

In the ACT existing provisions relating to theft and obtaining a service by deception are not very appropriate for valueless cheque cases. In cases where the person steals goods or makes off without payment there is no purported payment at all, and the relevant criminal intention is easy to establish from the facts. By contrast, if a person

passes a valueless cheque to obtain goods or services, it can be almost impossible to prove beyond a reasonable doubt that the defendant intended to defraud the payee when purporting to pay by cheque. The new provision will require a defendant who has presented a valueless cheque to provide evidence that he or she thought that the cheque would be honoured on presentation and did not intend to defraud. For example, a defendant could show that he or she had checked the account balance just before writing the cheque, or reasonably expected a salary payment to be deposited into the account to cover the cheque.

Clause 14 of the bill, and consequential amendments in Part 5, will enhance the protections available to persons arrested for summary offences. Part 1C of the Commonwealth Crimes Act 1914 already applies to the investigation of indictable offences under the laws of the ACT and contains important protections for suspects. For example, it contains the legislative requirement to allow an interview friend to be present when questioning a suspect who is an indigenous Australian. These provisions implement recommendations of the Royal Commission into Aboriginal Deaths in Custody, particularly recommendation 224.

At present there is no equivalent legislative protection for suspects in relation to summary offences, which means that persons under arrest for such offences cannot enforce the rights and protections which are available to suspects for serious offences. The extension of Part 1C to summary offences will not, however, apply to summary offences against the Road Transport (Alcohol and Drugs) Act 1977 or to other traffic offences that can be dealt with by way of infringement notice. This is because it would be impractical to require the police to tape record or video every interview with every motorist who receives a traffic infringement notice, or to postpone carrying out a random breath test until an interview friend arrived. In terms of the summary offences at present, it reflects current police practice at any rate. Often when police interview people it is somewhat uncertain as to whether summary offences will flow or indictable offences. What is proposed just reflects current police practice.

Successful prosecutions are dependent on the availability of relevant and lawfully obtained evidence to establish the defendant's involvement in an offence. The existing legislative framework under which police officers investigate offences can sometimes limit their ability to collect such evidence before it is lost or destroyed. To ensure that our police have the powers they need and they deserve to do their jobs effectively, clauses 15 to 35 of the bill contain amendments to the Crimes Act 1900 which enhance existing powers by:

- broadening the circumstances in which police may search people and vehicles, to bring our legislation into line with the New South Wales equivalent;

- altering the threshold for exercising the power to arrest without warrant in certain circumstances from "reasonable belief" to "reasonable suspicion";

- amending the personal search powers to facilitate searches by police officers of the same sex as the person being searched;

- treating certain summary offences as indictable offences for the purposes of provisions which authorise entry into premises; and

- facilitating the routine fingerprinting and photographing of any person in lawful custody in respect of an offence, including juveniles aged 16 years or over, to ensure the integrity of the fingerprint and photograph databases.

All those powers will greatly assist our police force.

Another emerging community problem is that of noisy parties or other sources of noise in our suburbs which impact negatively on other residences. Currently, the police are able to issue a noise abatement direction, but on occasions such directions have been ignored once the police leave the area. Clause 38 of the bill will enable police to seize any equipment generating offensive noise in certain circumstances. The intention is to ensure compliance with the noise abatement direction by temporarily removing the means of generating the noise.

Part 4 of the bill also contains amendments to the Crimes Act 1900 to insert a detailed new procedure for inquiries into convictions. Members may recall that last year, following his unsuccessful High Court appeal against his conviction for the murder of Colin Winchester, David Eastman indicated that he would seek an inquiry under section 475 of the Crimes Act of 1900 at some stage. Although that section has never been used in the ACT, its equivalent in New South Wales has been invoked on many occasions and has been substantially amended, largely to overcome the gaps and uncertainties in the operation of the provision as previously drafted.

It is thus timely to review the ACT's provision which reproduces an English provision that was developed before criminal appeals were permitted. Now that appeals are available in criminal matters, there is considerable duplication between the matters that may be canvassed in a criminal appeal and the matters which can be considered in an inquiry under section 475. Further, the provision provides only the barest of guidance as to how inquiries are to be conducted and what options are open at their conclusion. Perhaps the major shortcoming of section 475 is that the only options at the end of the inquiry are either to do nothing or to exercise the executive prerogatives to quash a conviction or remit a sentence. There is no facility to have a case retried where the inquiry shows that there was a procedural defect in the original trial.

The bill resolves these deficiencies by clearly articulating the processes for initiating and conducting an inquiry, and includes the option of ordering a fresh trial at the conclusion of the inquiry should the court consider this appropriate. The new inquiry process is intended to supplement, not duplicate, the criminal appeals structure and is expected to be invoked only in cases where evidence of a miscarriage of justice—for example, DNA evidence which exonerates the accused, or a confession by the real offender—comes to light after all opportunities for appeal have been exhausted.

In addition to their crime investigation and prevention roles, the police are often called upon to protect members of the community from possible harm. At times people are at greater risk of harm, whether at their own hands or those of others, because of intoxication. Part 6 of the bill amends the Intoxicated Persons (Care and Protection) Act of 1994 to ensure, firstly, that it can cover all intoxicated persons regardless of the source of their intoxication. Secondly, the amendments ensure that detention in police cells is the option of last resort. These amendments recognise that the primary need of

any intoxicated person is care, not incarceration or punishment, and that police cells may not be the best place in which to provide that help.

Part 7 of the bill extends the limitation period for prosecutions for minor theft offences. The current limitation period for such offences is 12 months. I need to check that. I thought it was six months. However, Mr Speaker, many minor thefts are not detected until after that period expires. For example, if an employee were to steal an amount early in the financial year, it may take until after the end of that financial year, when audited financial statements are in preparation, for the theft to be discovered. Similarly, with multiple shoplifting offences, the police have often found that there are quite often a number of additional offences which they are simply statute barred from prosecuting and which should be prosecuted. Part 7 of the bill and the amendment there will fix up that anomaly.

Part 8 of the bill will improve the effectiveness of provisions in the Road Transport (Safety and Traffic Management) Act of 1999 dealing with banned traffic devices, such as radar detectors, by allowing police to search vehicles reasonably suspected of carrying such devices. Part 9 makes a minor consequential amendment to the Road Transport (Offences) Regulations of 2000.

The criminal justice system balances the rights and freedoms of an accused person against the broader interest of society in ensuring that justice is done and is seen to be done. The bill is not about tipping the scales against the accused; it is about achieving a balance which our community can fairly say is just. Accordingly, Part 10 of the bill contains a new right to review acquittals which arise from an error by the trial judge. Appeals against acquittals are already permitted in Tasmania and Western Australia, and the ACT has for many years permitted "appeals", in the form of applications for an order to review, from decisions by a magistrate to dismiss a charge or discharge a defendant. The Canadian Supreme Court has determined that such appeals do not breach the longstanding prohibition on double jeopardy.

The new power for orders of review for Supreme Court acquittals furthers the interests of justice by allowing a defendant who is acquitted only because the court made a mistake to be retried in accordance with the law. The Court of Appeal, once it is established, will be able to set aside an acquittal and order a new trial where the trial judge wrongly directed the jury to acquit or made an error of law in the course of the trial. The power to review an acquittal will not extend to disturbing a jury's finding.

Mr Speaker, this Crimes Legislation Amendment Bill is not the opening bid in a law and order auction. A simplistic approach to addressing law and order issues prior to an election would have been to increase penalties across the board, as has been done in other jurisdictions. Our view is that higher penalties are of no use if the perpetrators are not located and convicted, or if the police have restrictions on their powers which prevent them from arresting those persons and placing them before the court.

Instead, this bill is a careful refinement and extension of existing provisions which are intended to ensure that the guilty, and only the guilty, are held accountable for their actions. In many instances it brings the ACT into line with what occurs across the border, especially in terms of things like reasonable suspicion rather than reasonable belief. I think it is ludicrous that criminals in New South Wales are able to be

apprehended because the test there is reasonable suspicion whereas the police here face a much harder test in terms of the current reasonable belief.

I commend the bill and the explanatory memorandum to the Assembly. I think it is a significant step forward in the criminal law. It is fair, but what it does do is ensure that our excellent police force has further legislative tools, and reasonable legislative tools, to do its job.

I flag an amendment the government will be bringing in, and that is simply in relation to a concern the Chief Magistrate had.

I move:

> That this bill be agreed to in principle.

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

Criminal Code Bill 2001

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

Title read by Clerk.

MR STEFANIAK (Minister for Education and Attorney-General) (11.02): I move:

> That this bill be agreed to in principle.

I seek leave to have my speech incorporated in *Hansard.*

Leave granted.

The speech read as follows:

> Mr Speaker
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> The Criminal Code 2001 marks the beginning of a new era in ACT criminal law, by setting out clearly the fundamental principles of criminal responsibility. These principles have been distilled from centuries of case law from English courts and, more recently, courts in Australian and other common law jurisdictions.
>
> Some of these principles are well known to all of us from novels, movies and television programs—many of us will recall Rumpole expounding to a goggle-eyed jury the "golden thread" of British justice, that a person is presumed innocent until the prosecution proves his or her guilt, beyond a reasonable doubt. That principle, from the *Woolmington* case, is incorporated into the Bill in clause 23.

There are other principles, less famous but equally important, contained in the proposed Code. These include the principle that crimes are composed of physical elements (sometimes referred to as the "actus reus" or "guilty act") and fault elements (sometimes referred to as the "mens rea" or "guilty mind"). If any of the requisite elements is not present, no crime has been committed. The Code explains the types of actions or conduct that can make up a physical element of a crime, and defines the four states of mind which most frequently constitute the fault elements for an offence—these are intention, knowledge, recklessness and negligence.

The Code explains how physical elements and fault elements interact, and what factors can negative their existence, thereby providing the defendant with a defence. It also explains how offences with no fault elements, such as offences of strict liability and absolute liability, are to apply and the defences which may apply to such offences.

The Code explains fundamental concepts relating to the burden of proof, setting out the general rules as to who must prove what matters, and to what standard. I trust that these provisions will be of assistance to the Scrutiny of Bills Committee, which has frequently raised queries concerning the burden of proof for proposed offences.

The text of the Code itself is based on Chapter 2 of the Model Criminal Code developed by the Model Criminal Code Officers Committee. That Committee carried out exhaustive research into case law and legislation to develop codified principles that reflect the consensus of opinion on the fundamental principles of criminal responsibility. Chapter 2 has been endorsed by all jurisdictions through the Standing Committee of Attorneys-General, and has already been enacted by the Commonwealth in its *Criminal Code Act* 1995.

The Code will be implemented in two stages, with this bill comprising the first stage. The second stage will be to review all existing offences under Territory law and where necessary, to redraft them in line with the principles set out in the proposed Code. Consideration will also be given in the second stage to incorporating those principles of criminal responsibility from Chapter 2 of the Model Criminal Code which have not been included in this bill. Those principles include matters such as the age of criminal responsibility which are already covered by legislation in the ACT and which it was not considered necessary to include in the first stage of the process.

As I mentioned previously, the Commonwealth has already enacted Chapter 2 of the Model Criminal Code. The implementation of the ACT's Code is expected to occur smoothly as officers of the Australian Federal Police are already familiar with its requirements, and our Courts have applied its provisions when dealing with offences under Commonwealth laws. I would like to take this opportunity to thank the Commonwealth for making extracts from the Explanatory Memorandum for its legislation available to the ACT.

I commend the Code and the Explanatory Memorandum to the Assembly.

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

Protection Orders Bill 2001

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

Title read by Clerk.

MR STEFANIAK (Minister for Education and Attorney-General) (11.03): I move:

> That this bill be agreed to in principle.

I seek leave to have my speech incorporated in *Hansard.*

Leave granted.

The speech read as follows:

> I present the Protection Orders Bill 2001.
>
> This Bill is the end product of an extensive technical review of the current restraining orders and protection orders legislation.
>
> The review was undertaken following a number of Supreme Court decisions which highlighted deficiencies in both the current legislation and in the way it is implemented.
>
> In the cases in question, the Supreme Court found that procedural defects in making the restraining orders rendered them invalid and hence no offence of breach of those orders was established. Clearly this is not an acceptable situation.
>
> While the Magistrates Court has instituted changes in procedures to address some of the issues identified by the Supreme Court, the cases have highlighted the need to reconsider and rationalise the current legislation.
>
> The Government was keen that the review should simplify the current legislation in addition to fixing the technical defects. To this end, the Protection Orders Bill consolidates the protection order provisions of the *Domestic Violence Act 1986* and the restraining order provisions in Part 10 of the *Magistrates Court Act 1930.* In addition, the Bill provides for the making of regulations for the essential procedural rules for protection order proceedings.
>
> The Protection Orders Bill provides a single consistent process for dealing with both restraining orders and protection orders.
>
> I would like to briefly highlight for members a few aspects of the Bill.
>
> The most obvious changes made by the Bill are changes to the name of the orders.
>
> While orders granted under the current *Domestic Violence Act* are formally referred to in the legislation as “protection orders”, they are most commonly known in general usage as “domestic violence orders”. This common use term is the term that is used in the Protection Orders Bill.

The Bill also contains a new definition of behaviour that under the current *Magistrates Court Act* provisions could be referred to as "restraining-order-type-violence". This is a bit of a mouthful however, and the Bill uses a new term "personal violence" to describe the behaviour that would be grounds for a restraining order.

Consistently with the approach taken with the domestic violence orders, the orders made in respect of personal violence will be known as "personal protection orders".

Under the Bill, the term "protection order" is a generic term used to refer to both domestic violence orders and personal protection orders.

These changes are not substantive changes. They are simply terminology changes designed to make the Bill more user friendly.

In some of the recent restraining order cases, the Supreme Court identified a number of difficulties with the role of the registrar in restraining order proceedings. The Protection Orders Bill addresses these difficulties by providing a clear statement of the power of the Registrar to conduct a preliminary conference, make a consent order, and adjourn proceedings in specific circumstances.

In response to the Supreme Court decisions, the Bill also clarifies the requirement for a "likelihood of repetition" for a personal protection order.

The Bill includes a clear statement of objects and principles. While the general object of the legislation is to facilitate the safety and protection of all people who experience interpersonal violence, it particularly recognises that domestic violence is a form of interpersonal violence that needs a greater level of protective response.

The statement of principles in the Bill is an articulation of the balancing of rights that is inherent in making a protection order. The protection of the aggrieved person is the paramount consideration. Within this framework, however, any protection order should be the least restrictive of the personal rights and liberties of the respondent while still giving effect to the paramount consideration.

Other provisions of the Protection Orders Bill that I would specifically draw to the attention of members are the provisions relating to personal protection orders in respect of the workplace.

Members will recall that in September 2000, this Assembly passed an amendment to the *Magistrates Court Act* to allow an employer to make an application for a restraining order on behalf of an employee.

The Bill takes a different approach to the current provisions of the *Magistrates Court Act* which focus on individual employees as the aggrieved person, with the employer able to make an application on behalf of that employee.

Under the provisions of the Bill, the focus is on the workplace rather than the individual employees, with the employer becoming the aggrieved person for the purpose of making an application.

As a result of this approach, workplace orders are provided for as a specific type of personal protection order and are included in a separate Division due to the different considerations that should apply in granting these types of orders.

The Bill makes it clear that the fact of the availability of workplace orders does not create any new rights or obligations in relation to the employment relationship. It is not intended, for example, that this legislation should give rise to a cause of action by an employee against an employer who does not apply for a workplace order in a particular situation.

For workplace orders, the emphasis is on the relationship of the violence to the employee in their capacity as an employee in a particular workplace.

If personal violence is aimed at an employee outside of their capacity as an employee in the workplace, then that employee may need to seek a separate personal protection order against the respondent.

This Bill will make the law in relation to protection orders clearer and also more accessible. Primarily, however, the Bill will provide a more effective mechanism to protect people from interpersonal violence.

I commend the Bill to the Assembly.

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

Protection Orders (Consequential Amendments) Bill 2001

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

Title read by Clerk.

MR STEFANIAK (Minister for Education and Attorney-General) (11.04): I move:

That this bill be agreed to in principle.

I seek leave to have my speech incorporated in *Hansard.*

Leave granted.

The speech read as follows:

I present the Protection Orders (Consequential Amendments) Bill 2001.

This Bill is a supporting Bill to the Protection Orders Bill 2001. The Bill makes a number of amendments to various Acts and regulations that cross refer to the current *Domestic Violence Act 1986* and part 10 of the *Magistrates Court Act 1930.*

The Bill repeals the *Protection Orders (Reciprocal Arrangements) Act 1992*, the protection order provisions of the *Domestic Violence Act 1986* and the restraining order provisions of the *Magistrates Court Act 1930.* Equivalent provisions are located in the new Protection Orders Bill 20012.

> The Bill also changes the name of the current *Domestic Violence Act 1986* to the *Domestic Violence Agencies Act 1986.* This changed name is more reflective of the changed nature of the Act, with the remaining provisions concerning the Domestic Violence Prevention Council, the Domestic Violence Coordinator, and the approval of domestic violence crisis support organisations.
>
> I commend the Bill to the Assembly.

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

Statute Law Amendment Bill 2001

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

Title read by Clerk.

MR STEFANIAK (Minister for Education and Attorney-General) (11.05): I move:

> That this bill be agreed to in principle.

I will be seeking leave to have my speech incorporated in *Hansard.* This is clean-up legislation basically, but there was one area that the government thought I should draw members' attention to, and that relates to amendments to the Transplantation and Anatomy Act of 1978. On page 3 of my speech I draw attention to that fact.

I think it is important in these clean-up bills, because they are so big, that there is nothing untoward and nothing of a policy nature in them, and that if there is anything likely to be controversial, even remotely, it is drawn to members' attention. I do not necessarily think this is controversial, but it is something that I think should be drawn to members' attention specifically because of some potential, perhaps, for it to be a bit controversial. I do not think it is, but just to be absolutely certain I draw it to members' attention so that we can all rest assured that the principle of clean-up bills being non-contentious is observed, because people obviously will not have time to go through every single detail of them.

Mr Speaker, I seek leave for the remainder of my speech to be incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> This Bill makes a range of statute law revision changes under the technical amendments program that the Government approved in 1999. The objective of the technical amendments program is to ensure that the ACT statute book is of the highest standard by maintaining it in up-to-date form. Under guidelines approved by the Government the essential criteria for the inclusion of amendments in the Bill are that the amendments are minor and noncontroversial.
>
> A well maintained statue book significantly enhances access to legislation by making it easier to find in an up-to-date form and easier to read and understand. Maintaining the statute book is necessary for a number of reasons. First, the law

reflects changes in the wider community, for example, changes in society's values and technological change. The statute book needs to be updated to take account of these changes.

Second, the ACT statute book has been created over some 90 years from various sources. Drafting practices, language usage, and printing formats and styles have changed over the years. Maintaining a minimum level of consistency in presentation and cohesion between legislation coming from different sources and enacted at different times can assist improved access to law.

Third, the statue book is a complex mosaic of individual items of legislation that interact with other items of legislation (and the common law). Therefore, changes to a law often generate the need for consequential amendments in other laws. Without these consequential amendments, the interaction between individual items of legislation can become confused and lead to legal uncertainty and reduce access to the law.

As a general rule, Statue Law Amendment Bills deal with four kinds of matters. First, minor amendments proposed by government agencies to correct minor problems that come to the attention of agencies during the course of administering their legislation

Schedule 1 of the Bill before the Assembly contains such amendments. These amendments are included in schedule 1 so they can be readily identified. Schedule 1 includes amendments of the *Radiation Act 1983* to improve and tighten up the law relating to exposure to ionizing radiation and the transport of radioactive materials. The amendments enable recommendations of the National Health and Medical Research Council about exposure to ionizing radiation to be given effect to.

Schedule 1 also includes amendments of the *Transplantation and Anatomy Act 1978*. The Act currently requires medical practitioners to carry out a clinical examination to determine the death of patients on life support systems. Since the Act was enacted, advances in medical technology have introduced more accurate and definite methods for determining the death of patients on life support. For example, it is now possible to determine more accurately the irreversible cessation of brain function in a patient on life support by radiological or other tests. However, as the Act stands, medical practitioners who are required to certify brain death must do so based on a clinical examination rather than these more accurate tests.

The amendment in Schedule 1, replaces the term 'clinical examination' with the term 'appropriate tests or tests'. The amendment will allow current medical best practice, for example tests approved by the Royal College of Physicians, to be used in ACT hospitals.

The second kind of matter in Statute Law Amendment Bills are amendments proposed by the Parliamentary Counsel's Office of Acts of 'general application' (such as the *Interpretation Act 1967* and the *Legislation Act 2001*) and other Acts that affect the structure of the statute book. When it commences, the *Legislation Act 2001* will bring many of the provisions dealing with the life cycle of legislation together in a single Act. Some of these provisions are still located in the Interpretation Act. Schedule 2 of this Bill relocates provisions from the Interpretation Act and remakes them, in updated form, as provisions of the Legislation Act.

Other amendments made by schedule 2 are particularly concerned with structural changes aimed at avoiding unnecessary duplication through the use of standard definitions and standard provisions.

Schedule 3 contains minor, technical amendments of legislation initiated by the Parliamentary Counsel's Office. Many of the amendments made by schedule 3 are consequential on or related to the repeal of Acts by this Bill.

Finally, Statute Law Amendment Bills periodically repeal Acts and subordinate laws that have become obsolete or are no longer needed. Schedule 4 contains such repeals.

Bearing in mind the rather technical nature of the Bill, I will not go into the detail of the amendments and repeals in the Bill. However, I should point out that the Bill itself contains rather detailed explanatory notes that Members may find helpful. The Parliamentary Counsel is also available to provide any additional explanation or information that Members need.

Mr Speaker, I am conscious that the value of 'housekeeping' Bills of this kind can be easily overlooked. However, the Territory has an obligation under the Self –Government Act to publish Territory laws. To achieve this, the statute book needs to be properly maintained.

The Bill is another step in the process of ensuring that the Territory's statute book is of the highest standard and serves the interests and aspirations of the people of the Territory.

Mr Speaker, I commend the Bill to the Assembly.

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

Education, Community Services and Recreation—Standing Committee
Authorisation for printing, circulation and publication of report

Motion (by **Ms Tucker**) agreed to:

That:

(1) if the Assembly is not sitting when the Standing Committee on Education, Community Services and Recreation has completed its inquiry into Adolescents and young adults at risk of not achieving satisfactory education and training outcomes the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing, circulation and publication; and

(2) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

Legislative Assembly (Members' Staff) Act—Instrument No 42 of 2001
Motion for disallowance

[Cognate motion:

Legislative Assembly (Members' Staff) Act—Instrument No 43 of 2001]

MR SPEAKER: Is it the wish of the Assembly to debate this motion for disallowance concurrently with the motion for disallowance of instrument No 43 of 2001? There being no objection, that course will be followed. I remind members that in debating Assembly business notice No 2 they may also address their remarks to Assembly business notice No 3.

MR BERRY (11.07): I move:

> That Instrument No 42 of 2001 entitled "Terms and Conditions of Employment of Staff of Office-Holders pursuant to Section 6 (2)", made under the *Legislative Assembly (Members' Staff) Act 1989*, be disallowed.

Mr Speaker, this disallowance motion goes to an instrument dated 9 March 2001 which affects staff of both members of the Assembly and office holders. The instrument sets out to impose conditions on members in relation to the negotiation of wages and working conditions—staff terms and conditions, as they are described in the instruments—in respect of certified agreements under the Australian workplace agreements system. It sets out also to put in place a regime for the negotiation of secret Australian workplace agreements for the staff of members and office holders.

The fundamental point of objection here is to the lowering of the bar which has occurred in relation to the negotiations which are to take place in those two matters. I do not know where the government gets its advice from on these things, but it is almost certainly—

Mr Humphries: From the public service.

MR BERRY: Is that right? I do not know the background of the public servant who gave you this advice, but it is almost certainly ideological because the instrument seeks to lower the bar of a no-disadvantage test which will apply to staff in this place when these negotiations are pursued. Whether it is intended is unclear—if it is intended, it is malicious; if it is unintended, it is incompetence—but it will also draw this legislature into conflict with federal legislation, namely, the Workplace Relations Act 1996.

Mr Humphries: Not according to my advice.

MR BERRY: I am afraid that you might have to check your advice again, because I understand that these issues have been the subject of notice in the Industrial Relations Commission and there has been some discussion about these issues in the commission. The union, I think it is the MEAA, have indicated that if this determination holds sway, they will seek an order from the commission to override the decision of the Assembly insofar as some elements of the instrument are concerned.

The central concern, as I understand it, is the no-disadvantage test as defined under part 6E of the Workplace Relations Act through the designated award, the Clerks (ACT) Award 1998. The appropriate award for the no-disadvantage test is J345, the journalists award, which covers members of this place insofar as that is concerned. There are other fundamental issues concerning what it is that it seems to me the government is setting out to do. It is setting out to create the impression, on the face of it at least, that it is shifting responsibility for the negotiation of industrial disputes from the territory, which is now responsible as the employer of staff in this place, to individual members. That is a fairly marked shift, in my view, and, on the face of it at least, it makes it difficult for collective negotiation by people in this place.

Mr Humphries: They might not want to.

MR BERRY: It makes it impossible for them.

Mr Humphries: No, it does not.

MR BERRY: Take another look. Fundamentally, the question here is the lowering of the bar in respect of the no-disadvantage test. Mr Speaker, it is basically for those reasons that I have proposed and support this motion to disallow both of these instruments.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (11.15): I was expecting more than that, Mr Speaker. Let me explain to the Assembly what it is that we are attempting to do with instruments Nos 42 and 43. It is clear that individual members of this place have a desire to negotiate outcomes for their staff that suit the particular conditions of the member's office. Since the beginning of this Assembly, we have accepted a certain amount of freedom on the part of members to set terms and conditions for their staff within certain bounds: bounds in terms of the total budget which that member has to spend in respect of their allowance; bounds in terms of minimum conditions that we expect members of the Assembly to adhere to when dealing with their staff; and bounds in terms of not binding a member who might succeed that member, say, after an election to particular terms and conditions for staff. That flexibility has been a feature for some time in the ACT.

The disallowance of the determinations which Mr Berry is seeking would undermine that process and revert the position of ACT Legislative Assembly members and, particularly, their staff to a one size fits all arrangement. The effect of disallowance would be that, instead of individual members being able to negotiate conditions and terms for their staff, someone else would have to do that.

Mr Berry: No, no.

MR HUMPHRIES: Yes, that is the case, Mr Berry. The person who would have to do that is me; that is, the Chief Minister would have to do that.

Mr Berry: Now we get to the bottom of it: the territory does not want to take responsibility for it.

MR HUMPHRIES: Let me say in no uncertain terms, Mr Berry, that that is absolutely right. I do not wish to take responsibility for negotiating the terms and conditions under which you employ your staff, or Mr Kaine, Ms Tucker or Mr Rugendyke. I consider it to be your responsibility to do that. Provided certain protections are in place—that is, that you do not pay them less than a minimum amount, which is embodied in this award by reference to the no-disadvantage test—and provided you adhere to certain limits, it ought to be up to you to make these decisions for yourself. Mr Speaker, there have been circumstances in the past where, I think it is fair to say, members have abused this flexibility to engineer arrangements for their staff which might be considered to be inappropriate.

The members of this place who were members of the First Assembly will recall that at time Mr Stevenson, the Abolish Self Government Coalition representative in this place, sought to cease employment altogether and instead come to some sort of arrangement for contracting services from a company and have a company supply staff to his office. Members were suspicious about what exactly that meant. They felt that there was some sort of tax-avoidance arrangement going on. At the time, the capacity to do that was removed from the Legislative Assembly (Members' Staff) Act, as I recall.

Mr Stevenson has gone and members have behaved in a very responsible way with respect to their staff, at least in terms of their terms and conditions, since that time and I have no hesitation in taking the view that members ought to be able to determine what their own staffing conditions should be. I think that Mr Berry is making it clear in moving this motion today that he considers that there should be a collective approach to these matters covering all staff in the Assembly.

Mr Berry: An opportunity for that.

MR HUMPHRIES: No. Let me make one thing clear: it is perfectly possible today for staff members collectively to put a position forward to all of their employers in this place if they want to. Staff members only have to get together and say that they will present conditions collectively to their de facto employers, the individual members of this place, and that would be a perfectly acceptable process. If the members accept that, that will be the result of that process.

Let us put a reality check on this matter for a minute. Mr Berry, how likely is it that your staff member and my staff member are going to sit down together and negotiate some common industrial outcome? It is extremely unlikely, I would have thought. All of our staff are very good, hardworking people, but they are not people who would sit down together and collectively negotiate an employment arrangement vis-a-vis all the members of the Assembly as one collective body, or more particularly against the Chief Minister, who would be the person conducting these negotiations. Mr Speaker, this is bluntly stupid.

Mr Berry accused us of being ideological but, in fact, it is Mr Berry who is being ideological, Mr Berry who is saying that there must be a collectivist approach, that there must be an approach which involves unions in all cases—

Mr Berry: No, don't misquote me.

MR HUMPHRIES: No, I am not misquoting you. I am summarising what I believe your position to be, Mr Berry, and you said before that you wanted a collectivist approach. You said that. That is what you said.

Mr Berry: No, I didn't. Don't misquote me. I've been Gary-ed again. You're a bloody liar, Gary.

MR HUMPHRIES: Play the man, not the ball; that is fine!

Mr Speaker, this issue is one of flexibility on the part of individual members. There is no reason why members ought to be told that the terms and conditions of their staff, within the limits which are prescribed in this determination, should not be set by each member and the member's staff in negotiation. That is the purpose of the Workplace Relations Act. Mr Berry was quick to say that he believes we ought to be working within that act in this process, that we should not breach the Workplace Relations Act 1996 of the Commonwealth. I agree. That act foreshadows the possibility of doing these things on a workplace by workplace basis, or even an individual employee by individual employee basis. That, it seems to me, is the most important thrust of the Workplace Relations Act, and that is what this determination provides for. Within the Workplace Relations Act, we say that members are entitled to be able to negotiate outcomes which suit their particular conditions.

Mr Berry gave a remarkably short speech in support of the disallowance motion. I understood him to be saying to members of this place that certain staff members were disadvantaged in some way by the present arrangements. Mr Berry has not elaborated on what he means by that or how he has reached that conclusion. Let me say now that if he comes back and puts such cases forward in his closing remarks to this debate, I will seek leave to speak again on the matter, because I am told that there is no disadvantage to any staff member of this place by virtue of this determination being made.

Let me refer to some of the other specific matters which Mr Berry raised. Mr Berry asserts that the clerks award 1998 is an inappropriate basis or benchmark against which to measure the no-disadvantage test in the ACT. He cites instead the journalists award, J345, as the better award. Let me say first of all that I do not know whether it is a better award. My advice is that the clerks award is the appropriate award. If Mr Berry was serious about this concern, however, he would have come forward today with an amendment to this determination to insert a different award there, but he has not done that.

Mr Berry: No, I don't believe any of that.

MR HUMPHRIES: Yes, I know that, Mr Berry, but you have used that as a pretext to knock out the determination, but have not explained exactly why. Why is the journalists award a better award than the clerks award? I assume that it is because it offers a higher minimum rate of pay to members. He has not told us why, but I assume that that is the case. That is fine; we can determine that. I do not know what are the differences in the two rates. If Mr Berry had bothered to tell us about these things beforehand, we would know what his argument is, but he has not done that.

Mr Speaker, I am advised that that is the appropriate award. If Mr Berry wants to move an amendment to the determination, I am very happy to entertain debate on that matter. But Mr Berry has not given any arguments in this debate about why the journalists award is better than the clerks award. If he does, we will be happy to engage him in debate on that subject.

Mr Berry says that there is conflict with the Workplace Relations Act. I have expressly asked for advice on that matter and it indicates that there is no conflict with the Workplace Relations Act. Mr Berry said at the beginning of his remarks that there was conflict with the Workplace Relations Act, but did not return—

Mr Berry: I said that there will be.

MR HUMPHRIES: Okay, there will be, but Mr Berry did not return in his speech to how that will occur.

Mr Berry: Yes, I told you.

MR HUMPHRIES: No, you did not.

Mr Berry: I said that there will be an application for an order in the commission to override this instrument.

MR SPEAKER: Order! You will get a chance to respond.

MR HUMPHRIES: My advice is that the matter is not currently before the commission.

Mr Berry: It is.

MR HUMPHRIES: I have my adviser here.

Mr Berry: It is being discussed in the commission. It is not the subject of a dispute, because it has not happened yet.

MR SPEAKER: Order! Mr Berry, be quiet! You will have a chance to respond.

MR HUMPHRIES: My advice is that the matter is not currently before the commission. My notes say that a union—I am not sure which union it is; I assume that it is the CPSU, but it may be the Media, Entertainment and Arts Alliance—had lodged a paper dispute to maintain coverage, but that matter has not been advanced in any way in the commission.

Mr Berry: It hasn't finished yet.

MR HUMPHRIES: It has not even begun, according to my notes.

Mr Berry: No, it says a paper dispute. That is a dispute.

MR HUMPHRIES: It has not been advanced; it has not gone anywhere.

MR SPEAKER: Stop quibbling across the chamber, please.

MR HUMPHRIES: Mr Speaker, I understand Mr Berry's position, because I wrote to all members on this matter when we first began this process and asked them for their views and the only—

Mr Berry: I said that you should negotiate with the union.

MR HUMPHRIES: I do not believe that I have received any correspondence from you on this subject, Mr Berry. I am sure that I have not received any correspondence from you.

Mr Berry: No, you probably got it from the Leader of the Opposition.

MR HUMPHRIES: Yes, I did get a letter from the Leader of the Opposition, who did not raise the issue that you have raised. I will read what the Leader of the Opposition raises. He says:

> The Labor Party remains of the view that the present arrangements for employing staff through common law contracts is far from satisfactory. We support the concept—

listen carefully—

> of a certified agreement between members' staff and their employer, but we are not convinced that the authority to enter such an agreement should be, or indeed under the terms of the Workplace Relations Act 1996 can be, delegated to individual members.

That is one issue he raises, whether a delegation of power is possible. You have not raised that issue, but Mr Stanhope has raised it. The second issue is:

> Labor is also concerned that the government is to pursue amendments to the Legislative Assembly (Members' Staff) Act in advance of any debate on your determination.

In fact, we are bringing forward the determination now, so that is not the case. We have this debate going on now, so that issue has been taken care of. The issue that remains is the issue of the power to delegate under the Workplace Relations Act. Mr Speaker, my advice is that there is authority to delegate this matter to individual members of the Assembly.

Mr Berry: What section of the Workplace Relations Act?

MR HUMPHRIES: It is an inherent common law power of the holder of an authority to delegate to somebody else. Mr Speaker, I effect that delegation through the instruments themselves, where I say that an office holder may negotiate with members of their staff the terms and conditions of employment, et cetera. That is the instrument of delegation. It is effected by this instrument. It is a common law power of a holder of

an authority to delegate. There is not a power for a delegate to delegate—the Latin principle delegatus non potest delegare—but I am not delegating from anybody else. It is my own authority under the legislation. I am delegating to individual members of the Assembly the power to negotiate on their behalf, and my advice says that I am entitled to do that . If Mr Berry believes that I have not got that authority, he could advance some further evidence of that fact, but he has not done so.

Mr Speaker, this is a half-baked proposal which will leave members of this Assembly badly exposed and will dramatically reduce their capacity to negotiate outcomes in their own cases which suit their workplaces. I would strongly urge members not to support this proposal. Mr Berry has not flagged his arguments very clearly today. In fact, he has not made it very explicit what he is arguing in this matter. I think that, frankly, it goes back to Mr Berry's view that there ought to be a collectivist approach in these matters and it ought to be up to unions to be involved in these negotiations in all cases. I can only assume that that is what Mr Berry believes. I think that is inappropriate. I think members have to have the power to negotiate outcomes for their own officers, provided minimum standards are met. I believe that this instrument sets out those minimum standards. If Mr Berry believes a better standard applies, he should move an amendment to this determination, not seek to wipe it out altogether.

MR MOORE (Minister for Health, Housing and Community Services) (11.30): The Chief Minister indicated in his speech that he would take some advice on the impact on the journalists union. I have spoken to his adviser and my understanding of the issue is that the commission has flagged to the unions involved, including the journalists union, that enterprise bargaining is an appropriate way to consider the unions' concerns. That is the first part.

The second part, with regard to which award should have coverage, is that, of the 50 or so staff, about 17 are union members and the unions believe that they ought to be covered by the journalists award. That is yet to be proven in any way; the case has not been established. If Mr Berry happens to believe that the 17 members who are covered by unions should be covered by the journalists award, that is interesting and fine. What he is doing is saying that, for the minority of people who have this view and are covered by unions, there should be collective bargaining. That is what I am hearing from Mr Berry. I hope that explanation is adequate in terms of the advice I just received.

Mr Speaker, it seems to me that the more flexibility I have to be able to deal with my own staff in an effective way to deliver in the best way that I can as a member, which is, after all, what we are here to do, the more effectively I can deliver it, doing so with the normal and appropriate protections for staff that are still there. That is fundamental. The Chief Minister went through those protections. The staff are entitled to those normal protections. Nobody is debating that. That has not been changed. But the determination made by the Chief Minister that Mr Berry is trying to disallow does give us more flexibility in the way we deal with our staff, with the exception of that issue of the normal protection that any staff member is entitled to. Mr Speaker, this disallowance motion of Mr Berry's is ideological. It is actually about collective bargaining; it is not about anything else.

MR RUGENDYKE (11.32): On the surface, it would appear that this motion is an easy one to support, based on the information given that there were negotiation processes under way in some form and that some people may be disadvantaged if this motion were not to succeed. Quite frankly, the Chief Minister has given a speech that has asked more questions than it has answered. I have no particular view on whether collective bargaining is a good thing or whether the Reith Workplace Relations Act is a good thing. I do not know, quite frankly. It is not my area of expertise, I will admit that. I do like having the ability to negotiate conditions with my own staff. I do like having the ability to be responsible for the conditions under which my staff operate.

It has not yet been explained to me in this debate either that that is a bad thing or that that will be affected by my support for this disallowance motion. It is also quite clear that there is confusion as to whether there is some sort of negotiation process in place, presumably, in the Industrial Relations Commission. The impression I was given is that there is something in train; I still do not know. I recall that at some point during the time that this debate has been around there was some sort of dispute over an ambit claim that some union advocates put in. I cannot remember the detail of it, but it was totally outrageous. It was silly; it was bizarre; it would have meant that my staff always would be on holidays. That is one thing I remember about this debate.

Mr Berry claims that he has been misquoted in this debate. I would like to hear how. It is all right for Mr Berry to misquote me, but it is not all right for Mr Berry to be misquoted.

Mr Berry: I haven't said anything about you.

Mr Moore: Today.

MR RUGENDYKE: Today.

Mr Berry: Oh, in another area.

MR RUGENDYKE: In another area. You misquote me when it suits you, but you do not like to be misquoted yourself. I look forward to listening to the rest of this debate. All bets are off. My initial support for this motion was based on the premise, as I said, that there were some people who would be disadvantaged and that there was some sort of negotiation going on.

Mr Berry: There is.

MR RUGENDYKE: I was not told that I would not be able to negotiate the conditions under which my staff work. We have not heard about that. Mr Speaker, I look forward to the rest of the debate to be convinced as to why I should support the motion.

MR CORBELL (11.37): I am happy to attempt to clarify or to deal with some of the confusion that exists in some members' minds, notably those who are arguing against this disallowance motion today. Mr Speaker, there is a dispute before the commission. Why has it not been progressed? It has not been progressed because we are dealing with this motion today. That is why; it is that simple. If this motion is unsuccessful

today, the aspects that this motion deals with will be addressed in the commission. But there is the option for this Assembly to resolve some of these issues today. That is the purpose of Mr Berry's disallowance motion. I hope that that answers Mr Rugendyke's first point. There is a dispute, but the progressing of the dispute is dependent on the outcome of the vote today.

Secondly, some members of staff will be disadvantaged and I would argue that some members of this place will be disadvantaged, because what the government is attempting to do through these proposed changes is to make individual members responsible as employers, rather than the territory.

Mr Rugendyke: I am happy about that. I will take responsibility for my staff.

MR CORBELL: Mr Rugendyke says that he is happy about that. First of all, Mr Rugendyke, let me make the point that you cannot actually be the employer. You cannot be; it is a nonsense. The territory is the employer and you are a delegate of the employer, the territory. You act on behalf of the territory, but you are not the employer. Mr Speaker, if Mr Rugendyke sincerely wants to be the employer, Mr Rugendyke will have to be happy to be personally responsible for, and therefore personally liable for, any claims made against the employer, such as some sort of injury that occurred at work. Mr Rugendyke, if a member of your staff suffers a permanent disability as the result of an accident at work, are you happy to be personally responsible for the costs associated with that?

Mr Rugendyke: I do not know whether that is the same issue.

MR CORBELL: It is exactly the same issue. The argument is that we will become the employers. If the argument is that you want to be the employer, you have to accept the full responsibilities of being the employer. The reality is that what the government is saying is a legal nonsense. We cannot be the employers. The territory is the employer. The territory is the body which pays our staff.

Mr Rugendyke: If I am a delegate and that is as close as I get, that is what I accept. Tell me why I should not accept being a delegate of the territory?

MR CORBELL: What the government is attempting to do, Mr Rugendyke, is to say that you are a little bit more than just a delegate. It is trying to shift the legal responsibility onto you, and that is not appropriate. Mr Speaker, it is wrong for the territory to attempt to make individual members the employers. We cannot be, nor should we be; the territory is the employer. It is wrong for the government to suggest that there is not a dispute, because there is one. The last point that I would like to raise relates to the issue of which award should be used. It is wrong of the government to argue that there should be a particular award set for determining the no-disadvantage test.

Mr Moore: He argued it.

MR CORBELL: Mr Berry has made the point that, if an award is to be used, it should be the journalists award. Mr Berry has argued that it should be the journalists award, whereas the government is claiming that it should be the clerks award. The point that

the government has missed in this regard is that the decision as to which award it should be should not be a decision of the Assembly at all. That is the point Mr Berry is making. The point Mr Berry is making is that the union, the Media, Entertainment and Arts Alliance, has taken a dispute to the commission, arguing that the commission should decide which award should be used in determining the no-disadvantage test. The union has argued that it should be the journalists award. This government, though, is attempting to set which award should be used for the no-disadvantage test. That is not appropriate. That should not be happening.

The government is wrong on those three counts. There is a dispute, but the dispute has not progressed because its progression is pending the outcome of our vote today. The issue of which award should be used for the no-disadvantage test should not be determined by this government; it should be determined by the Industrial Relations Commission, but the government is trying to override that by attempting to set what the award should be. Thirdly, it is inappropriate for the government to argue that members should be the employers. The territory is the employer. We act as agents of the employer, the territory. Those are the three reasons why the disallowance motion should be supported today. They are clear and straightforward. Mr Rugendyke, you have not been misled; you have not had misrepresentations made to you. Those are the facts of the matter. I urge you to continue with your support. This matter should be appropriately addressed by the commission, not pre-empted by the regulations the government will put in place today if this disallowance motion is not supported.

MR KAINE (11.44): I wish I could be so confident of the facts as Mr Corbell just outlined them. Unfortunately, I am in the same boat as Mr Rugendyke. I have no industrial relations advice available to me. I do not have banks of lawyers and industrial relations experts lining up to tell me what are the facts in this case. Quite frankly, I do not know what the facts are, and Mr Corbell did not convince me on that.

Like Mr Rugendyke, I was inclined to support Mr Berry's move this morning because it had been put to me in very simplistic terms. It was put along the lines that this is an argument about which union's award ought to apply, that the government ought not to be determining that. It is clearly far more complex than that. On the points that Mr Corbell made, I am by no means clear and I am by no means satisfied that the argument that he put to us stated the facts. First of all, he said that there is a dispute. I am not aware that any member of my staff is in dispute with anybody. They are not in dispute with me. Who is in dispute with whom and over what issues? I know of no such dispute. Is it a fact that there is a dispute? If there is one, it is not known to me. If my staff members like to come to me at any time today and say to me that they are in dispute and want this matter resolved, I would be interested to hear it, but no-one has done so up till now.

The second "fact" that Mr Corbell put to us is that some staff will be disadvantaged. Which ones. I have no knowledge of any disadvantage that will accrue to any staff member of mine by virtue of the Chief Minister's determinations and nobody has attempted during the debate so far to outline what those disadvantages are or to whom they will apply. Fact No 2 seems to be a little bit fuzzy around the edges, as is fact No 1.

The third point seems to be the question of the clerks union versus the journalists and the commission's involvement in that. I do not know which unions my staff members belong to, if any. In fact, I know that one does not belong to any union at all. I do not know about the other two. What is the point about journalists? How many staff members of this place are practising journalists and therefore belong to the journalists union? I have no statistics on that. I simply do not know.

There also seems to be the proposition that if we do not overturn the Chief Minister's determination, somehow the Industrial Relations Commission will determine the matter. As far as I understand it, Commonwealth law overrides our law anyway; so, if there is a continuing difference of opinion over this matter, the commission will determine it matter anyway, regardless of whether we disallow the Chief Minister's determinations. I am not too sure what we are arguing about this morning. Perhaps the Industrial Relations Commission is the place where the matter ought to be resolved. What is the problem in taking it to that body and having it resolved if it is the right place and it will be the final arbiter anyway?

I do not know about Mr Corbell's so-called facts. As I said, I started off thinking that I was pretty clear, that it was a pretty simple and basic matter. It has turned out not to be and I am not clear that I understand the issues at all now. A practice that I work to if I do not think I understand, if I am in doubt, is to vote no, which is a prudent way to go. I do not know what the consequences are of my voting yes on this motion. I do not know what the consequences are for my staff, I do not know what the consequences are for me and I do not know what the consequences are for all of us.

I would say that I do not think that we ought to be getting into an enterprise bargaining agreement on the basis that this is one big enterprise. As far as I am concerned, it is 17 different enterprises and I am one-seventeenth of it. I do not know that I want to have the Chief Minister getting into the middle of discussions between me and my staff as to what their conditions will be, how much they will be paid, what hours they will work and the like. It is not really his business. I do know that there is one legal body in this town, namely, the Administrative Appeals Tribunal, that in a case that came before it within the last three or four years accepted the argument that the member is the employer for all practical purposes. It is the member who negotiates an employment agreement. It is the member who signs that agreement. The Chief Minister does not sign agreements with my staff; I do. The member determines the conditions under which the employees will work. That is all done under the basis of an allowance provided to me so that I can employ staff. The Administrative Appeals Tribunal accepted the proposition that the member is, for all practical purposes, the employer.

Despite Mr Corbell's proposition that that is not the case, he will have to produce some evidence of the fact. If he believes that he is not the employer of his staff, I am not the employer of mine and Mr Rugendyke is not the employer of his, Mr Corbell will have to bring forward some evidence to prove that that is the case. Frankly, I do not believe that it is. It is by no means a simple issue. It is not as simple as it was put forward to me in the first place. Like Mr Rugendyke, I have real concerns now about the ramifications of all of it. Perhaps we should leave it to the industrial relations tribunal to determine, rather than trying to pre-empt them by making a decision which

would be overturned by them anyway if the matter ever went to them for determination.

It being 45 minutes after the commencement of Assembly business, the debate was interrupted in accordance with standing order 77. Ordered that the time allotted to Assembly business be extended by 30 minutes.

MS TUCKER (11.52): This motion seeks to disallow an instrument made by the Chief Minister which varies the terms and conditions of employment of the staff of MLAs to allow the negotiation of certified agreements under the Australian workplace agreements section of the Commonwealth Workplace Relations Act. If Mr Kaine is not sure that he should oppose things, he should support Mr Berry's motion, because it is Mr Humphries who has initiated this change.

The arguments being put here today are that this is somehow a very complicated matter, that it is matter of ideology and so on. At present, staff are generally employed under Commonwealth contracts which are linked back to general public service conditions, although the Chief Minister can vary these conditions through determinations. I understand that some members want the flexibility to use certified agreements and AWAs for the employment of their staff. I also understand that the staff of the ALP members, or some of them, are interested in developing a certified agreement which they believe will give them more protection against the arbitrary changes to their conditions by the Chief Minister.

I do not have a fixed view on the most appropriate employment arrangements for staff in this Assembly, although the Greens do have a general problem with the use of AWAs as they undermine the system of collective bargaining which has protected workers conditions for many years. As I have said many times in this place, if you look at who is suffering from the lack of collective bargaining you will find that it is the weakest and most vulnerable people in our community; in particular, women who are in industries which are not industrially strong.

My office, getting back to this issue, has been able to work with the existing system of contract employment, but I do understand the concerns of the ALP. There is, I understand, a definite problem with this instrument in its reference to the clerks award.

Mr Humphries: Why?

MS TUCKER: Mr Humphries asks why. I do not know how many staff of the people here actually went to the seminar organised by the Secretariat back in March to explain the implications of this instrument. My staff went and they were interested to hear that the independent industrial relations consultant engaged to run the seminar could not understand why the clerks award was specified. The consultant thought it must have been a mistake or that it was decided by someone who did not know how the act worked.

People who work with me went to that seminar. They were interested in understanding the issues. I am not an expert on this issue as to either the Workplace Relations Act or the commission, but I do know that Mr Humphries is initiating a change here. If people

are not comfortable with what is happening and do not understand it, they should be supporting Mr Berry's motion because it is Mr Humphries who is initiating this change. The consultant that we listened to was very concerned about the clerks award being specified here. We might like to see another instrument. I am not saying that there should never be an instrument. This is not about ideology; it is about trying to get a considered position and I am not happy with what is happening. I have not heard Mr Humphries put up a good argument against those concerns about the clerks award.

If members want to apply the precautionary principle to this issue as they do not fully understand it, they should definitely support Mr Berry's disallowance motion. That does not mean that another instrument cannot be put up. What Mr Rugendyke and Mr Kaine are doing today by supporting Mr Humphries in this regard and opposing Mr Berry is they are sealing it. They are saying that they agree that Mr Humphries is right. I just do not think that they have the knowledge to do that. They have not put that knowledge to me in this debate. I have not heard either of them say that they have a full understanding of what is going on. I think it is reasonable to support Mr Berry's disallowance motion today.

Mr Kaine: And then what happens?

MS TUCKER: Let us see what Mr Humphries wants to do. He can re-word—

Mr Kaine: You are urging me to support Mr Berry's motion, but I want to know what will happen if I do. If you cannot answer that question, how can you urge me to support it.

MS TUCKER: Mr Kaine asks what would happen if he supported Mr Berry's disallowance motion. Support for Mr Berry's disallowance motion would mean that this instrument would not get up. That would mean that Mr Humphries would have to think again about the reference to the clerks award, because that is the main reason I am not supporting it. I am supporting Mr Berry because real concerns have been expressed by several people as well as the consultant that was talking to the people in the Assembly who were interested in understanding the issue that it was strange to have this reference to the clerks award and that under the no-disadvantage test, which is what we are talking about, this reference to the clerks award is a problem. If you are concerned about your staff, you should be concerned about that.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): I seek leave to speak again in this matter, Mr Speaker, as further information about this matter has been brought to my attention by my advisers.

Mr Berry: No. You have had your go. You can speak under standing order 47 if you think you have been misinterpreted; otherwise, you should sit down.

MR HUMPHRIES: No, it is additional information.

MR SPEAKER: Is leave granted?

Mr Berry: No. You lied about things that I said, Gary, and I am not going to give you another chance to do it.

Mr Moore: I take a point of order, Mr Speaker. Mr Berry cannot accuse anybody of lying unless he does so by way of a substantive motion.

MR SPEAKER: Withdraw that remark, please, Mr Berry.

Mr Berry: I withdraw it, with the greatest reluctance.

MR SPEAKER: Thank you.

Leave granted.

MR HUMPHRIES: Mr Speaker, I will be quite brief. I want to make a few comments. First of all, Mr Corbell is wrong to say that by accepting this determination today we will oust the jurisdiction of the industrial commission. Mr Kaine is right about that. This determination sets a floor. The commission can decide that a higher amount should be the no-disadvantage test, so that is perfectly possible today. All we are doing is setting a floor, but the floor can be raised.

I have some information about the different rates of pay under these two awards. Mr Speaker, the clerks award was chosen for no particular reason, except that it was an award applicable to people in clerical positions. Whether people who work in this building are closer to clerks or to journalists, I do not really care to enter into. My department chose an award which seemed to be a reasonable basis on which to set the minimum level, the floor, for this arrangement.

I will give a comparison between the different rates of pay, as I understand these documents. The minimum rate of pay for the lowest grade under the clerks award would be $439.60 per week. The minimum rate of pay under the journalists award would be just under $600 a week. We have put forward a suggestion in our determination here. If members do not like it, they have the power under the Subordinate Laws Act to amend the instrument by putting a different award in that document as the base, which, as I have said, can then be changed again by the industrial commission if that is the view of the industrial commission. We felt that was an appropriate minimum award; $439 a week for an employee here seemed like a reasonable base below which nobody could go. Mr Berry says, in effect, that it should be $600 per week.

Ms Tucker says that we should have put our case. No case was made against the clerks award in this debate. Mr Berry simply said that it was not the appropriate award, that the journalists award is more appropriate, but did not explain why. I think it is not appropriate in that it provides for less flexibility for members and I think $439.60 per week is a reasonable base for someone who comes into somebody's office in a very junior position.

Mr Berry: What classification is that?

MR HUMPHRIES: Clerk grade 1, the lowest grade. It is an appropriate floor under this arrangement, I think. If you have someone in your office who is very junior, $439.60 a week is probably a reasonable basis on which to pay them. If Mr Berry does

not like that, if he thinks the journalists award is the right one, he should amend this instrument, not knock it out altogether. But he does not want to do that; he wants to knock out the whole thing because he does not like the idea of individual members having the right to make these decisions with respect to their own staff.

Mr Berry: Mr Speaker, I have been Gary-ed severely.

MR SPEAKER: Just a moment, please, Mr Berry. You are going to have the right of reply anyway.

Mr Berry: He is a bloody liar.

Mr Moore: I take a point of order, Mr Speaker. Just a moment ago you asked Mr Berry to withdraw calling Mr Humphries a liar. He has just repeated it.

Mr Berry: I was talking under my breath and I am sorry they heard it. I withdraw it.

MR SPEAKER: Thank you.

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

Leave granted.

MR RUGENDYKE: I think it is quite clear that some of us are not sure of the ramifications of what is happening here today, but I might be able to clear up one small aspect, that is, whether we are in dispute. I do not know and Mr Kaine does not know. The Labor Party knows, because a staffer of the Leader of the Opposition has received a letter from the Media, Entertainment and Arts Alliance, which is, I presume, their union, the final paragraph of which says:

> Accordingly should the Assembly support the making of this instrument then the Media, Entertainment and Arts Alliance will have no other course open to it but to seek the assistance of the AIRC.

Whether we are in dispute or not now, we will be tomorrow by the look of it, so that is probably the appropriate place for this issue to be determined.

MR BERRY (12.03), in reply: The darkness will now lighten, Dave. Of course that is the place for it to be settled. We should not be determining these matters here, which is what the government has set out to do in relation to this matter. Do not be misled by Mr Humphries. He tries it on all the time.

Mr Humphries said that I am opposed to members negotiating with their staff. No, I am not. I do it all the time, and we all do it all the time. That was the first Gary. The second Gary was his attempt to undervalue the dispute-making process. He said that it is a paper dispute, as if it were something less than a dispute. It is a dispute, a formal dispute, lodged in the commission, on my understanding of it. A paper dispute is a dispute in the commission. He tried to undervalue the proceedings in the commission. Then they tried to ridicule the form of application, which was a traditional form of application with ambit claims in it.

Mr Humphries: No, we did not.

Mr Rugendyke: No, I ridiculed that. They didn't ridicule it; I ridiculed it.

MR BERRY: With respect, Mr Rugendyke, you misunderstand ambit claims and the history and tradition of them. Some of us are sometimes amused by ambit claims, but they have a long and traditional history in industrial relations in this country which has been borne out by necessity under industrial law. There is nothing special or unusual about them.

Mr Rugendyke: I have been Berry-ed again.

MR BERRY: You say that you have been Berry-ed again. What was untrue in what I just said? Nothing.

Mr Humphries: You just said that we had ridiculed the award process.

MR BERRY: I heard Michael Moore laughing about some of the numbers.

Mr Humphries: Oh, laughing is ridicule, is it?

MR BERRY: That is. Mr Kaine, rightly, said that this matter should be resolved in the Industrial Relations Commission, not here. That is what we are setting out to do. I think we are overstepping the mark here. Mr Kaine said, "If you do not understand the consequences, vote no." I agree with him. He does not understand the consequences. Mr Kaine, you will not get today an understanding of the consequences from Mr Humphries, so you should vote no to their proposal by supporting my move.

Mr Kaine mentioned the Administrative Appeals Tribunal. I think he might have been referring to a certain difficulty between an employee and a member of this place which went to the Administrative Appeals Tribunal. It was not an industrial matter and whatever the Administrative Appeals Tribunal said in relation to the matter would not have much bearing on what happens in the Industrial Relations Commission.

Mr Kaine: It was just a ruling which I thought was relevant.

MR BERRY: It may well have been a ruling, Mr Kaine, but it would not have much to do with what goes on in the Industrial Relations Commission, because the Industrial Relations Commission will find that the territory is the employer. Mr Rugendyke, whatever you want to do, the Industrial Relations Commission will always find that the territory is the employer. They may find that you are the delegate of the employer, for good reason.

Mr Rugendyke: I am happy with that.

MR BERRY: You should be aware of the fact that, as a delegate of the employer, certain conditions will be set out by the employer in relation to your employees and how you can apply them. Those conditions are set out in another instrument which I have in front of me somewhere, I think it is Instrument No 50 of 2001. It talks about

all of the conditions that you can apply to your staff. As the employer, it sets down those conditions for you as delegate to use as a guideline.

Mr Speaker, it is open to an employee, as it is open to anybody here, through their union, to challenge those in the Industrial Relations Commission by means of a paper dispute which then becomes a dispute between the employee and the employer, the government. From here on, a member's influence over those terms and conditions is zilch, because they will be determined by way of settlement of that dispute, whether it be an enterprise bargaining agreement, a certified agreement or whatever. That would be a matter for the Industrial Relations Commission. Relieving ourselves of this instrument—dumping it, that is, in accordance with my motion—will change nothing in relation to all of that.

The instrument tries to create the impression that members are the employers. They are not; they are delegates of the employer. It tries also to put in place a no-disadvantage test which is based on a lower award in the ACT, and the no-disadvantage test will apply specifically in relation to Australian workplace agreements. Members say, "My staff are not going to be disadvantaged by that." I accept that; neither will mine. But we have some obligations to staff of the future and staff of other members if they are mistreated, I would think. One of our obligations is to make sure that the terms and conditions under which members negotiate are fair.

Going back to the point that was made by Mr Kaine, the Industrial Relations Commission is the place to determine whether terms and conditions are fair, not here. That is why we should not be determining that that award is the baseline for Australian workplace agreements. We should be letting other people make those determinations. I think that the appropriate place for them to be determined is in the Industrial Relations Commission.

The Media, Entertainment and Arts Alliance and other unions, I suspect, will want their awards to be the base line because, in one way or another, that will then give them some lien on making claims about coverage in this area. But that is not to say that the Media, Entertainment and Arts Alliance will succeed, or any other union for that matter. Again, we should not be determining that. That is something that ought to be sorted out between the parties. The parties in this matter are the workers, through their unions, and the employer, the ACT government.

There is one condition on what I said, that is, that J345 is the award with coverage for press secretaries. My employees probably would qualify in one way or another. A whole heap of other employees would qualify, as far as I can see. The clerks award does not apply to those people. Why would you have as a base line the clerks award, which does not apply to those sorts of people in the Assembly? That is why the matter is the subject of dispute in the Industrial Relations Commission.

That is where it ought to be sorted out. We should not have a situation where the government is trying to create a set of conditions which could throw us into conflict with the Industrial Relations Commission and federal law. It is not our job to create laws and conditions which create disputes between us and federal authorities, especially when those federal authorities can sort out the dispute or the difference

between the parties by a mechanism which we agree to abide with generally throughout the territory.

We accept that the Workplace Relations Act, like it or lump it, applies generally throughout the territory and its dispute-settling processes, award-making processes and certified agreement processes apply generally throughout the territory. The main thrust of my argument here is about why we are interfering in this process. We should not be. It can be easily sorted out by a dispute which has already been lodged in the commission and will ultimately lead to some sort of outcome in relation to those conditions which are set by the minister and imposed on us as members.

So far as negotiations between members and their staff are concerned, I cannot see a reason for change. There are some things about the arrangements that I do not like, but I cannot see how these conditions will improve that situation. The view that I am getting from unions and from staff who are au fait with this matter and concerned about these issues, and they have been around for a long time, is that this is not the way forward. There has been some discussions with a consultant. *(Extension of time granted.)*

Mr Speaker, this issue is one that ought to be settled by the commission. I hope that I am not misquoting the situation, but it seems to me that there is a move here to try to circumvent the process. There is a possibility that that is in play, but it is hard to make it out. If we are trying to make decisions in this place that are almost certain to fall foul of something going on in the commission, it is hard to imagine that there is not some strategy behind it. I cannot pick it out. That is my paranoia, I suppose, in relation to industrial relations, but I think we should stay out of it.

I agree with Mr Kaine, although Mr Kaine was looking at it from a different direction. We should not play with this matter. It should be settled in the Industrial Relations Commission, because that is where the dispute lies. The result will eventually flow through to us as conditions which are set out under the Legislative Assembly (Members' Staff) Act and we will have to abide by the limits which are placed on us. I cannot see any reason to change that. That is why I urge members to support the motion that I have put forward

I think I have clarified everything that members have raised and expressed concern about. I think that exhausts my list. No, I should deal with one other issue that was raised. Somebody opposite said something about the number of people who are covered by the MEAA award. They said 17 people or something like that were covered. A number of people are covered by the clerks award. There are probably some people who think that they are not in the system at all. But we were told about one person who was covered by the clerks award, which I found interesting. All of those things are a bit irrelevant anyway because, if we want to take over the role of dealing with industrial issues, we should build ourselves an industrial relations commission to do it for us.

I was involved in industrial relations for a big chunk of my life, but that was while ago. I do not pretend to be carrying with me the expertise that I had in 1989. Things have changed. I do not think anybody else here could claim to have been any better than I have been in that respect.

Mr Stanhope: Mr Moore.

MR BERRY: Mr Moore probably would. I am about 13 years behind the times. I reckon that the best place to settle these matters is in the commission. It is the subject of a dispute in the commission. It will involve negotiations. It will involve an enterprise bargaining agreement or some other agreement. The option is still there for the people to have Australian workplace agreements. I reckon that we should leave it to the commission and stay out of it.

MR RUGENDYKE: I seek leave to table the document I referred to.

Leave granted.

MR RUGENDYKE: I present the following paper:

> Legislative Assembly (Members' Staff) Act—Determinations—Copy of letter from Senior Industrial Officer responsible for Public Sector employment), Media Entertainment and Arts Alliance to Mr Greg Friedewald, Opposition Leader's Office, dated 20 March 2001.

Question put:

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

The Assembly voted—

Ayes 7		Noes 10	
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	Mr Smyth
Mr Stanhope		Mr Kaine	Mr Stefaniak

Question so resolved in the negative.

Legislative Assembly (Members' Staff) Act—Instrument No 43 of 2001
Motion for disallowance

Motion (by **Mr Berry**) put:

> That Instrument No 43 of 2001 entitled "Terms and Conditions of Employment of staff of Members pursuant to Section 11 (2)", made under the *Legislative Assembly (Members' Staff) Act 1989*, be disallowed.

The Assembly voted—

Ayes 7		Noes 10	
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	Mr Smyth
Mr Stanhope		Mr Kaine	Mr Stefaniak

Question so resolved in the negative.

Planning and Urban Services—Standing Committee

Statement by Chairman—new inquiry

MR HIRD: Mr Speaker, I wish to inform the house, pursuant to standing order 246A, that on 18 May this year the Standing Committee on Planning and Urban Services resolved as follows:

> To inquire into and report by the last sitting day of August 2001 on extending the choice of electricity retailer to smaller customers with particular reference to:
>
> (1) the ACT's undertakings and obligations in relation to the implementation of the Competition Principles Agreement and other National Competition Policy obligations and the cost to the government of foregone revenue of not meeting obligations under the Agreement;
>
> (2) the effects, with particular reference to residential customers, of:
> (a) the likely impact of the recently upward trend in prices within the National Electricity Market;
> (b) the effect of possible increases in electricity prices for socially disadvantaged customers and options for safety nets for these groups;
>
> (3) the means by which any identified adverse impacts may be avoided or mitigated.

Statement by Chairman—papers

MR HIRD: I wish to inform the house, pursuant to standing order 246A, that the Standing Committee on Planning and Urban Services has received correspondence concerning the Gungahlin Drive extension from Save the Ridge dated 21 March this year. I wish to make a statement.

MR SPEAKER: Proceed.

MR HIRD: On 8 March this year, the Standing Committee on Planning and Urban Services presented a very large report on proposals to extend Gungahlin Drive. The report was the subject of comment by a number of members at that time. On 27 March, I was asked by a member in this place about the committee's response to correspondence dated 21 March this year from a community organisation called Save

the Ridge. This correspondence made serious allegations about the quality of the committee's report on the Gungahlin Drive extension.

The member who asked the question tabled correspondence from Save the Ridge, and asked me whether the committee would respond to the 10 specific questions posed by Save the Ridge. I stated that the committee had not yet considered the correspondence but would do so in the near future. The committee has now deliberated on the correspondence and sent off a detailed reply to Save the Ridge. Our reply addresses each of the matters raised by the organisation. The committee's response is thorough and respectful.

Members will see that the committee rejects criticism made by Save the Ridge. In view of members' interest in this matter, I seek leave to table the committee's response, together with two maps, and ask that the response be incorporated in *Hansard*. That will ensure that future readers of *Hansard* will have the opportunity to see the committee's response to the letter from Save the Ridge.

Leave granted.

The response read as follows:

Mr Greg Tanner
Chair
'Save the Ridge'
PO Box 204
O'CONNOR ACT 2602

Dear Mr Tanner

On behalf of the Standing Committee on Planning and Urban Services, I acknowledge receipt of your correspondence dated 21/03/01—which has been discussed by members who have cleared this response to the matters you have raised.

Your correspondence deals with this committee's Report No 67 *Proposals* for the *Gungahlin Drive Extension (John Dedman Parkway).* Specifically, Save the Ridge states that the report is 'biased, has ignored significant new evidence…. and has misrepresented the views of Save the Ridge and a large majority of the community who made submission to the inquiry'. Further, Save the Ridge states that the report 'sets an alarmingly low standard for committees in the ACT and shows a disregard for democratic process and public consultation'.

The committee rejects these claims.

The committee responds as follows to the ten specific points listed in your correspondence.

Point 1

1. Save the Ridge claims that the committee completely ignored 'evidence of Environment ACT's criticism of the adequacy of the PA'.

2.

3.

4. At paragraphs 3.24 to 3.27, the committee listed the concerns—identified by the PA—about noise assessment, residential and visual amenity, and flora and fauna assessment. At paragraphs 5.37 to 5.40, the committee set out its conclusion in relation to these matters. The committee did not 'ignore' the criticisms—it simply came to a different conclusion to Save the Ridge about their relative importance in relation to reaching a decision about the GDE [Gungahlin Drive extension].

5. Save the Ridge claims that 'the eastern option will undermine one of the basic tenets of the Y Plan'.

6. In a submission dated 17/11/00 at p.4, 'Save the Ridge' listed four benefits of the western route, namely: 'reducing traffic congestion and pollution by allowing fast uninterrupted travel; providing social equity by minimising travel time and cost; ensuring retention of significant open spaces between major town centres; [and] avoiding the push for intensive urban infill which results from one centralised employment centre (CBD) surrounded by dormitory suburbs with congested transport links serving the CBD'.

7. These four benefits *may be said to apply equally to both the eastern and western routes* for the GDE—they certainly are not benefits that apply only to the western route.

8. The committee notes that the Y Plan envisaged a number of districts served by a system of peripheral freeways and spinal rapid transit routes which (along with other essential infrastructure) passed through the bush corridors separating the districts. Both the eastern and western options for the GDE cross bushland between the townships of central Canberra, Belconnen and Gungahlin.

9. Save the Ridge claims that 'the eastern option can only be an 80kph arterial because of the topography of Bruce Ridge and the AIS, whereas the western option is capable of 100 kmp parkway standard transport link'.

10. The committee did not receive evidence that the western route is capable of 100 kph. Further, the committee notes that this may not be feasible because of design constraints associated with the location and manner of the GDE crossing Ginninderra Drive and Belconnen Way. More importantly, *however the committee points out that the GDE—over its whole length—is designed for 80 kph, no matter whether the GDE goes to the east or the west of the AIS*. Both the Maunsell study and the government have stated all along that the GDE will be an 80 kph arterial road, not a 100 kph road. However, in light of the government's acceptance of this committee's recommendations for grade-separated interchanges, it may be possible to increase the speed limit above 80 kph.

Point 2

11. Save the Ridge asks 'why didn't the committee direct the government to provide more detailed costing information…'?

12. Government witnesses told the committee at the public hearings that no more detailed costings were available than those in the Maunsell study [see paragraph 13.13 of the report]—the committee had to accept this. The committee used what information was available to estimate the cost of both

13.

14. routes once an allowance was made for removing the Barry Drive link from the eastern option—this information is at paragraphs 13.2 to 13.5 of the report. The committee came to the view that the cost of the western option should incorporate the cost of replacement parking between Braybrooke and Leverrier Streets, as well as some adjustment for the cost of ensuring safe access by pedestrians to the AIS and Bruce Stadium during road construction [see paragraphs 13.35 and 13.36].

15. Further, government witnesses told the committee that the cost of a grade-separated intersection of the GDE and Ginninderra Drive—which committee recommends—is $1m-$2m greater if the GDE is located to the west of the AIS than if it is located to the east, due to 'terrain differences and potential realignment of drainage channels' along Ginninderra Drive [see paragraph 13.14 of the report].

16. *Taking these factors into account, the committee concluded that the cost of the western option is approximately $25m-$28m [see paragraph 13.38]. By comparison, the cost of the eastern option is approximately $21m-$22m [paragraph 13.39]*

17. The committee was informed by the government in November 2000 that further work on the cost of the eastern and western alignments had been done. The committee reproduced the government's advice at paragraph 13.14 of the report. It shows that the respective costs of the eastern and western alignments were $22m and $24m

18. The above comments apply to the evidence presented to the committee during the inquiry. *Since the report was released*, some further debate has taken place about the estimated cost of the eastern and western alignments. In particular, the 2001-2002 Budget Paper No 3 (at page 134) and Budget Paper No 4(at page 196) show an allocation of $32 m for the GDE, which is described as being 'four lanes plus tunnels'.

19. The reference to 'four lanes' is in accord with information given to the committee during the inquiry and incorporated in the Maunsell Study. This information referred to the fact that Maunsell's Option 3A [which excluded the Barry Drive link] required four lanes over its whole length [see paragraph 13.4 of the committee's report].

20. The reference to 'tunnels' was a 'mistake' according to information provided to the Select Committee on Estimates 2001-2002. The government told the Select Committee that the difference in cost between $22m (as stated in this committee's report) and $32 m (as stated in the Budget Papers) was due to the inclusion of three grade-separated interchanges along the GDE.

21. The government's original plan for the GDE had at-grade intersections at GDE/Barton Highway intersection, GDE/Ginninderra Drive, and GDE/Belconnen Way [see paragraph 2.15 of the committee's report]. The committee recommended that these three intersections be grade-separated [see the committee's recommendations numbers 8, 11 and 12]. In making these recommendations, the committee had estimates of the cost of two of the intersections: the GDE/Ginninderra Drive intersection was costed at $3 m for the eastern alignment and $4m-$5m for the western alignment, and the GDE/Belconnen Way intersection was costed at $2m [see paragraph 13.14 of the report].

22. Information provided to the Select Committee on Estimates 2001-2002 was that the estimated cost of the GDE/Barton Highway intersection was $5m (assuming no Commonwealth government funding was available).

23. So on the basis of the above figures, the cost of the three grade-separated interchanges would add $10m to the cost of the eastern alignment [taking it to around $32m] and $11m-$12m to the cost of the western alignment [taking it to $36m-$40m].

Point 3

24. Save the Ridges asks 'why did the committee put so much credence to the costing provided by Maunsell in January 2001…'?

25. The committee did not give excessive credence to this information; it simply reproduced the information at paragraphs 13.7 to 13.10 of the report and noted, when drawing together all pieces of evidence taken during the inquiry, that 'the evidence presented in the course of the inquiry indicates that the eastern alignment is cheaper than the western alignment' [see paragraph 13.40 of the report].

Point 4

26. Save the Ridges asks 'why did the committee accept the inclusion of $3m in the cost of 'other works' (Masterman Street etc) which are unrelated to the western option per se?'

27. The committee did not definitively accept the inclusion of these costs but noted that, if they are included they do take the estimated cost of the western option from the $24.7m stated above [in paragraph 13] to approximately $28m. This is the basis on which the committee concluded that ' an estimate of approximately $25m-$28m in not unreasonable for the western alignment' [paragraph 13.38]. *Even the lower estimate for the cost of the western route is more than the estimated cost of the eastern alignment.*

Point 5

28. Save the Ridge asks why the committee did not mention 'the significant cost savings afforded by a 100 kph freeway standard road…'?

29. The committee points out that both the Maunsell Study and the government assumed a 80 kph speed limit over the whole length of the GDE. The committee did not receive evidence that the western route is capable of 100 kph; further, the committee is aware of design constraints (involving the intersections of both Ginninderra Drive and Belconnen Way) which may not allow such speeds. Also, the committee is not aware of how a speed limit of 100 kph would produce 'significant cost savings', given that the 'cost savings' of a freeway-type road are said to come from a steady, uninterrupted flow of traffic (whether it is travelling at 80 kph or 100 kph) rather than from simply travelling at a faster speed.

Point 6

30. Save the Ridge asks why the committee ignored 'significant new environmental research … which shows O'Connor Ridge contains one of the highest value remnant woodland areas in the ACT'?

31. The committee did not ignore such research but simply came to a different conclusion than Save the Ridge about the relative emphasis to be given to such research when reaching a conclusion about the GDE.

Point 7

32. Save the Ridge claims that its position on the GDE and its alignment were 'misrepresented' in the committee's report. Save the Ridge, in Attachment A to its correspondence, provides excerpts form Dr Tanner's oral testimony.

33. A majority of the committee (Mr Corbell dissenting) does not dispute this testimony but points out that it needs to be set alongside the following passage in the written submission by Save the Ridge dated 31/8/99 [page 12 of Part A of that submission]:

    'We oppose that proposed eastern extension of the Gungahlin Parkway though Bruce/O'Connor Ridge… In particular, we oppose the eastern spur to Barry Drive. If there must be a road, and we are far from convinced that this is necessary, the 'community option' or western route is preferable on several environmental grounds' [emphasis added].

34. This passage indicates that Save the Ridge is not convinced of the need for the GDE. The same point applies to the petition attached to the submission dated 31/8/01 by Save the Ridge for it too raises a doubt about whether the petition's signatories want the GDE at all. The relevant words on the petition are:

    We… oppose the proposed eastern extension of the Gungahlin Parkway through O'Connor Ridge…. If there must be a road, the 'community option' or western route is preferable…' [emphasis added].

35. *It is on the basis of this written material submitted by Save the Ridge that the committee placed a question mark in the column headed 'For GDE' in the Appendix to the committee's report [see page 174]. Mr Corbell considers that the position of Save the Ridge was misrepresented in this regard.*

36. While still at page 174 of the committee's report, the column alongside 'For GDE' identifies whether a submitter expressed a clear preference for the eastern or western alignment. In view of the above qualification about the need for the GDE at all, the committee did not feel that it could state that Save the Ridge was 'for' the western option (though it was readily apparent that Save the Ridge preferred the western alignment to the eastern one if a GDE *was inevitable*).

37. Rather than claiming that Save the Ridge was 'for' the western option the committee *acknowledged that every piece of evidence from Save the Ridge made It plain that Save the Ridge certainly was against the eastern alignment;* hence the words 'not east' in the column headed 'East or west route' in the Appendix of the committee's report.

38. Save the Ridge states that it has 'evidence that ours was not the only submission that was misrepresented in this way in the [committee's] report'.

39. In the absence of specific examples, the committee cannot respond to this generalised claim. However, the committee draws attention to its admission, in the first page of the Appendix [at page 153 of the report], that 'the information in the Appendix is accurate to the best of the committee's ability' and, if errors occurred in the compilation of the Appendix, the committee 'apologises for such errors'.

Point 8

40. Save the Ridge asks why the committee 'misrepresented the views of the majority of those who made submissions to the inquiry?'

41. The basis for this claim appears to be that nearly all submissions were received *before* the government decided, in November 2000, to delete the proposed Barry Drive link from the eastern alignment. A majority of the committee did not consider that this decision negated all the evidence that it had received. Nor did a majority of the committee consider that there was need for a further round of public hearings, given that the committee had already held six public hearings, received over 800 submissions and was 19 months into its inquiry when the government's decision was made.

42. When compiling the Appendix to the report the committee explicitly included a column identifying whether a submitter expressed a clear view about the Barry Drive link. This column, like the other columns in the Appendix, was included *for information purposes only*. It reflected the interest of many submitters (including Saving the Ridge) in the number of submitters 'for' and 'against' certain aspects of the inquiry. It was not meant to show 'votes' as claimed by Save the Ridge.

43. In reaching a conclusion about the GDE's alignment, the committee was not swayed one way or the other by the number of submitters 'for' or 'against' the GDE or its alignment [see chapter 13 of the report].

Point 9

44. Save the Ridge asks why do the totals on pages 138/9 of the report 'only add up to 683 when it is stated that 891 submissions were made to the inquiry'?

45. The reason is that some submissions did not address the matters summarised in paragraph 13.21 of the report, i.e. they did not identify whether they were for or against the GDE, nor whether they favoured an eastern or western route or a Barry Drive link. They raised other matters but not these particular ones. (Examples include some submissions expressing concern about the effect of the GDE upon native vegetation or expressing concern about Gungahlin bus services but, in neither case, making a comment about whether the GDE should go ahead.)

Point 10

46. Save the Ridge asks 'why has the committee counted some group submissions and/or form letters as representing groups (and thus not counted) while others were taken as representing individuals (and were counted)…'?

47. Save the Ridge refers to Attachment B to its correspondence, which mentions that Save the Ridge 'submitted several submissions signed by approximately 2000 individuals' Save the Ridge states that 'these votes for the western option by 2000 residents of Canberra are totally ignored in the committee report. [and are] not tallied in the count of submissions on pages 138/9 of the report'.

48. The committee did not totally ignore this information provided by Save the Ridge, which was treated as additions to the submission by Save the Ridge. However, the material was not in a form that parliamentary committees accept as separate submissions. This committee's treatment of the material is in no way different to that which other parliamentary committees would have done in the same circumstances.

49. Save the Ridge states that 'several hundred form letters supporting the Gungahlin Community Council's view have been counted as separate submissions…'

50. Though many were form letters, these were treated as submissions because they contained a clear name and address and had been separately mailed/faxed/emailed to the committee. The committee also treated as submissions many cards and brief letters supporting the position of Save the Ridge, which were hand-delivered or posted to the committee following a public meeting of Save the Ridge. Paragraph 1.6 of the committee's report refers to this material.

51. In relation to counting submissions, the committee notes that this is always difficult where an organisation claims to represent many individuals. For example, it can be claimed that it is inappropriate to count as just one submission the material, not only from Save the Ridge (with many members), but the material submitted by other organisations with many members—such as the Aranda Residents' Group, the National Parks Association, the North Canberra Community Council, the Master Builders' Association, the Bus and Coach Association, the Raiders, the AIS, the Gungahlin Community Council, and even the ACT government. Nevertheless, it is customary for parliamentary committees to treat such written material as just one submission; and the committee adopted this approach in its report.

52. Mr Corbell considers that the evidence submitted by a range of people, including petitions, should have been included in the table of submissions, even though they are not technically a submission to the committee. This would have shown the full extent of peoples' views within the one area of the report.

Conclusion

53. The committee considers that the care and effort that went into its report are in the best traditions of work by parliamentary committees. The committee's report deals with each one of the seven terms of reference for the inquiry (set by the Assembly on 21 April 1999).

50. Two of the terms of reference were so large as to constitute major inquiries of their own namely, the adequacy of the Maunsell Study and the examination of 'other [ACT] transport studies'. The committee devoted three chapters to the adequacy of the Maunsell Study [chapters 2-5] and three chapters to ACT transport studies [chapters 6-8]. While all chapters of the report show the same high standard of care and attention to detail, these six chapters in particular show the committee's thoroughness in coming to grips with what the Legislative Assembly asked it to do.

51. As in all its reports, the committee used direct quotes from submissions and reports wherever possible in order to portray accurately the point of view of the person or organisation making a submission.

52 The committee respects the views of Save the Ridge but this does not mean that the committee sees the many issues raised by an examination of the GDE in the same light as Save the Ridge. For that matter, the committee does not see things in the same light as any particular submitter to the inquiry (government included). The committee has reached its conclusions taking into account all of the material provided to it in the course of the inquiry.

53. As always, the committee hopes that its report will facilitate the public debate on the important issues raised by the inquiry, even if some in our community disagree with the committee's conclusions. As stated in paragraph 15.3 of the report, this is their right.

Yours sincerely

Harold Hird MLA
Chair
14 June 2001

MR HIRD: I present the following papers:

Gungahlin Drive Extension—

Copy of letter from Mr Hird MLA (Chair), Standing Committee on Planning and Urban Services to Chair 'Save the Ridge', dated 14 June 2001.

John Dedman Parkway Preliminary Assessment—Maps prepared by Maunsell—Attachments A and B.

Sitting suspended from 12.26 to 2.30 pm

Questions without notice

Lyneham tennis centre

MR STANHOPE: Mr Speaker, my question is to the minister for sport. Can the minister tell the Assembly whether there were any conditions attached to the capital grant of $1.7 million to Tennis ACT for the redevelopment of the Lyneham tennis centre? Was there a condition that should Tennis ACT pass the redevelopment proposal to a private sector third party the capital grant was repayable to the government? If that is the case, when will the government get back its $1.7 million from Mr James Hanna?

MR STEFANIAK: Mr Speaker, as I said yesterday, this was an excellent opportunity for the ACT, regardless of what happened with any private development. As I told Mr Hargreaves, in assessing when you grant money or not you look at the community benefit. If the government gets back $1.7 million from any subsequent development of the area, well and good. That is a bonus. But with the $1.7 million, the bottom line, Mr Stanhope, is that we get five Rebound Ace courts and 15 clay courts, a total of 20 courts. As I said yesterday, that is a significant boon to tennis in the ACT. If this other development goes ahead we will then be refunded $1.7 million. That is a bonus, Mr Stanhope.

Mr Wood: If.

Mr Stanhope: Only if it goes ahead.

MR STEFANIAK: Even if something goes wrong. My colleagues have put conditions on that. Let us play devil's advocate and say it does not, Mr Stanhope. Even if that did not go ahead, we end up with 20 additional courts, which is a substantial investment for the sport of tennis and will assist many young Canberrans and not so young Canberrans have improved tennis facilities. As I indicated yesterday, a number of other Canberra sporting facilities have benefited from some fairly significant investment over recent years. I certainly have absolutely no drama with tennis benefiting as well. I suppose the difference with this potential development is that the government does stand to get its money back.

I certainly hope that this development can go ahead. I think it is a very exciting proposal which will hugely benefit Canberra. If it does not, we still have 15 of those 20 courts which will be Rebound Ace courts. They will be built in the next financial year. That was always part of the proposed arrangements. That will make us the clay court capital of Australia. That in itself, I think, will enable us to get some very significant competitions, as Tennis Australia have indicated. Also, it increases the range of opportunities for tennis in Canberra, basically grass roots tennis. Frankly, Mr Stanhope, that is what I particularly liked about the arrangements when the government agreed to pay $1.7 million over two years.

Mr Moore: It is 15 clay courts and five others. You said it back to front.

MR STEFANIAK: Fifteen clay courts and five Rebound Ace.

MR STANHOPE: Thank you, minister, for the advice that we may never see the $1.7 million. Minister, do you expect to see the $1.7 million returned, or will the government receive a letter of commitment, an IOU, as other creditors have received?

MR STEFANIAK: Mr Stanhope, I certainly hope that the government will see the $1.7 million. I certainly hope that this development can go ahead. I think that would be excellent for the ACT. If that is the case, we will get the $1.7 million. Even if, God forbid, that does not happen, I think we have spent $1.7 million very well, and a lot of people are getting benefit from that. Even more will get benefit in the future.

Fireworks

MR OSBORNE: My question is to the Minister for Urban Services. Minister, are you able to give us a general report on the extent of legal fireworks used in the ACT leading up to, and over, the long weekend? You may not be able to. Could you also report on what efforts have been made by your department and the police, and what success has resulted, to curb the use of illegal fireworks? I would ask that you distinguish between fireworks that are illegal because they were bought or sold without a proper permit and those fireworks that are illegal because they are considered too dangerous to use. I ask that question because I received a letter, as I think some other members did, from a couple in my electorate who had their letterbox blown up, which is not an uncommon occurrence around this time of the year.

MR SMYTH: After three years of attempting to get the industry to be responsible, we have had a large number of reports of the sale of illegal fireworks. Several people have approached me, and I have received numerous letters, as I assume other members have, about banning fireworks.

There are two sorts of legal fireworks. There are the display fireworks which can be used by pyrotechnicians with a permit at any time of the year. There are shopgoods fireworks which can be sold for the two weeks leading up to the Queen's Birthday, for use only on the Queen's Birthday weekend. Then there are illegal fireworks that do not meet the definition of a firework under the act.

We have attempted to enable people to use their fireworks safely on the Queen's Birthday long weekend. However, the department is still working on a report, Mr Osborne, and I hope to have that quite quickly. But the initial grab is that there were some bonfires that got out of control. Three premises were licensed to sell classified shopgoods fireworks throughout the season, but we have reports of up to six premises allegedly selling fireworks without a 2001 licence. ACT WorkCover has referred three cases to the Fair Trading Commissioner in relation to possible false and misleading advertising.

At the same time, an enormous number of complaints have been made to the RSPCA about animals that were disturbed by the fireworks season. Once I can get all that information confirmed and gathered, I will be happy to provide the member with more information.

MR OSBORNE: Are ACT WorkCover responsible for inspecting fireworks that are for sale? I do not know the answer to this question. Are they the body that also try to ferret out the illegal fireworks from organisations and stores?

MR SMYTH: The dangerous goods inspectors are part of WorkCover. The police also have certain powers under the act. Under the act, fireworks have to be tested to make sure they conform to the standard, and that information has to be submitted before a licence can be issued for their sale. My understanding is that the three firms that sought licences for the sale of shopgoods fireworks also supplied information that said that the fireworks they would sell complied with the law.

V8 supercar race

MR QUINLAN: My question to the Minister for Business, Tourism and the Arts relates to the traffic arrangements for the GMC400 and the additional money that the Assembly approved to operate the event. On a couple of occasions, and most recently at estimates hearings, you indicated that at least part of the additional $1.5 million that has been allocated to the GMC400 was to satisfy the NCA's request to speed up the process of the erection of barriers and the provision of traffic measures for the race. This year traffic appears to have been held up by the barricades, et cetera, for longer than was the case last year. How do you reconcile telling us, I think on a couple of occasions in this place, that the money was being allocated to reduce the amount of traffic congestion and now we find that the disruption has lasted longer?

MR SMYTH: Mr Speaker, I think I said on previous occasions that some of the additional money would go to shortening the construction period—the time that it took to put up and take down the GMC rally. We closed some of the streets early in order to shorten the period of construction. This enabled more intense activity to take place in the final week before the race. The GMC rally was taken down on the Monday, which enabled all the street closures to be removed for the start of traffic on the Tuesday morning.

MR QUINLAN: I have had a call from a lady constituent from Campbell who said that the congestion was such that she could not get out of her driveway to keep an appointment. What steps have been taken this year to measure the impact of the elongated traffic congestion that we paid extra for? What measures have been taken to evaluate the impact of the race on traffic?

MR SMYTH: The traffic was monitored each day in the lead-up to the race and over the weekend. I expect that a section of the final report on the GMC400 will be devoted to how the traffic measures and the closures went, and that there will be an assessment of what can be done to improve it next year.

School buses

MR HIRD: My question is to the Minister for Urban Services, Mr Smyth. I refer to a media release by Mr Berry of 4 June of this year relating to free school buses. Can the minister advise the house how many applications the government has received to date under the free school student travel scheme?

Mr Kaine: Sixteen thousand.

MR SMYTH: Approximately 16,000 applications have been received—Mr Kaine pays attention—under the free school student travel scheme, and we are receiving more applications every day. The curious thing is that currently there are only approximately 15,000 students who travel to school by bus. That means the scheme has encouraged more parents to consider using a bus as a means of transport for their children to travel to school. We hope to see that leading to a reduction in the number of parents using private motor vehicles to take their children to school. That would be much better for the environment through there being fewer greenhouse gas emissions, for instance.

Mr Berry: Seventy-five per cent miss out.

MR SPEAKER: And you will be 100 per cent out of here very shortly if you keep that up, Mr Berry.

MR SMYTH: Concerns were raised on WIN news last night about parking outside the Gold Creek Primary Schools at Nicholls and I think that the Chief Minister had a call this morning about parking at the Red Hill Primary School. Hopefully, the provision of free school transport will see a reduction in traffic congestion, and therefore parking congestion, around our primary schools.

Mr Berry's recent press release said that no-one has called for the introduction of free school buses. I think the 16,000 applications we have had are a very strong answer from the community that it is actually interested in the school transport scheme. ACTION expects that, by the start of this system in September, it will have about 20,000 applications processed.

MR HIRD: Mr Speaker, I have a supplementary question; I could not let the opportunity go by. Mr Berry, in his media release, claimed that 75 per cent of the students will not receive any benefit. Will the students who will not be eligible under the free school student travel scheme receive any benefit under the new school bus travel arrangements?

MR SMYTH: For those students who will not get a free travel pass there will be a benefit as well. Clearly, members opposite have not read the budget papers or listened to or read the media reports as the government has said that it will also introduce a new flat fare, a one-zone fare, effective from 23 July, the first day of the third term. Clearly, that means everyone has the potential to benefit.

Mr Berry is wrong in his claim that 75 per cent have been left out. When the free school student travel scheme starts in September, those students who are not eligible for a free pass will be able to use the one-zone fare, the flat fare, to travel to school anywhere across the territory.

What will that do, Mr Speaker? That will put hundreds of dollars, potentially, back into the pockets of families for spending on education, uniforms, text books or anything else they choose. That is what this government is about. Through sound financial management, having made up for Labor's $344 million debt, we are now able

to give back to the people of the ACT the benefits of the hard years that they have had to go through.

Lyneham tennis centre

MR CORBELL: My question also is to the Minister for Urban Services. Minister, section 253 (a) of the Land (Planning and Environment) Act 1991 provides for the revocation of a development approval if the government is satisfied that the approval was obtained by fraud or misrepresentation. Will the minister confirm that this is the section under which he was advised by PALM that he might be able to revoke the approval of the Lyneham tennis centre redevelopment? Will he table any such advice he received from PALM on this matter?

MR SMYTH: Mr Speaker, I answered this question yesterday, as we answered it the day before. They will not listen and do not pay attention. The whole point of what the government did here was to break the stalemate. The government wanted to achieve two things. We wanted to make sure—

Mr Corbell: I rise to a point of order, Mr Speaker. The question was quite specific: will the minister confirm that this is the section under which he considered revoking the advice and will he table such advice?

MR SPEAKER: Do not repeat the question, Mr Corbell. Sit down.

Mr Corbell: Tell him to be succinct and confine himself to the subject matter of the question.

MR SPEAKER: In which case, you can sit down too, Minister. A question fully answered cannot be renewed.

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

MR SPEAKER: I am sorry but the question was answered yesterday. You should read your standing orders.

Dissent from ruling

MR CORBELL (2.47): I wish to move to suspend so much of the standing orders as would prevent me moving dissent from your ruling.

MR SPEAKER: Proceed.

MR CORBELL: I move:

> That so much of the standing and temporary orders be suspended as would prevent Mr Corbell moving dissent from the Speaker's ruling.

Mr Speaker, your ruling today is blatantly partisan and unacceptable. The ruling you have just made in no way reflects the situation when I asked the question today. I asked the minister to confirm whether or not the advice he received from PALM was

that he could revoke the development approval potentially for the Lyneham tennis centre on the ground that it was obtained by fraud or misrepresentation. I further asked the minister if he would table any such advice he received to that extent.

Mr Speaker, you have not demonstrated, and neither has the government, for that matter, that this question is in any way similar to the question asked yesterday. In fact, I do not believe you know the question that was asked yesterday and whether or not it is any way similar. I can confirm to you, Mr Speaker, that it is absolutely not the same question. For you to simply say that the question has been fully answered when you do not know what the question was that was asked yesterday is, quite frankly, a joke. For you to behave in such a manner and deny me the opportunity to ask a supplementary question on this matter is also a joke.

Mr Speaker, the opposition entered into the most recent sittings of this Assembly in anew spirit of trying to engage more openly, let us say, in the question time process, but, as you would know from the discussions of representatives of all members in this place in the Standing Committee on Administration and Procedure, the committee was strongly of the view that you should uphold the standing orders in relation to ministers answering questions in a succinct matter. In fact, Mr Speaker, the offer was extended to you that the support would be available from the opposition for you to be able to hold ministers accountable in that regard.

Quite frankly, Mr Speaker, you have failed to do that. You have failed to demonstrate any willingness to hold the government to its responsibilities in relation to answering questions. You are being quite vigorous, I must say, in ensuring that the opposition stick by standing orders, but you are not demonstrating the same level of commitment in relation to holding ministers accountable in relation to the answering of questions.

Mr Speaker, the bottom line is that you have not demonstrated that the question I asked yesterday is the same as the one I asked today. You have basically allowed the government to avoid answering the question by saying that the question has been fully answered. Your ruling is quite inappropriate. First of all, you should require the minister to answer the question, and secondly, you should permit me to ask a supplementary question in response.

MR MOORE (Minister for Health, Housing and Community Services) (2.50): Mr Speaker, I think it is really important to keep this in perspective. There are a couple of things. The first one is that if you look back at the question time for the last couple of days you will see that there has been as much time spent on the questions as the answers. The government has respected the will of the Assembly and has answered succinctly, with the one exception when I was asked something like a four or five part question and I said I may need to go a little longer. Even then I believe I stayed within the four minutes, with that one exception, because we recognised a concern that Mr Kaine had raised. The government has deliberately taken the effort to answer the questions in a reasonable way.

The contrary part, Mr Speaker, that puts the lie to what Mr Corbell is saying is that you also made it very clear that what the opposition were not to do was to stand up, pretend they were taking a point of order, and then reiterate their questions. It is the game they have played. Mr Berry used to be the very best at it. You have made it very clear to

them that they were not to do that. They have attempted to do it again and again, contrary to the spirit that Mr Simon Corbell is talking about.

Supposedly they came in with a new sense of spirit, and they have spent almost all of question time guffawing and laughing amongst themselves, making it very difficult for ministers to answers questions, because as soon as the answer is not going the way they want it they are not interested. They talk between themselves in very loud voices and make it difficult to operate. Now, we have accepted that. We have gone on and proceeded. We have answered the questions as best we can.

On the specific matter, Mr Speaker: there is no way that any Speaker can require a minister to answer a question—

Mr Quinlan: What humbug!

Mr Berry: We will sing in praise—

MR SPEAKER: Order!

MR MOORE: Here it goes again, Mr Speaker. We listened to Mr Corbell, but when I am speaking we have got Mr Berry, Mr Hargreaves and Mr Quinlan all interrupting me as I speak at this very moment, Mr Speaker.

Mr Stanhope: And you would never do that.

MR MOORE: And Mr Stanhope. We have a situation where no Speaker is able to require a minister to answer a question in a particular way. It is impossible. We answer the question as we see fit from our area of knowledge in the best way we can, and the electorate and the media judge us on how we answer questions. That is the nature of question time, Mr Speaker. When a minister says, "I have answered this question fully", that is the biggest indicator you have of whether the question has been answered fully or not. Mr Speaker, you make a judgment about that.

We have heard a series of questions on the Lyneham tennis centre, and that is understandable. The opposition is certainly entitled to do that. But as the answers become more and more repetitive, it is quite clear that the issues have been covered. They have been covered in a slightly different way in the opposition, for who knows what reason, and I do not object to that.

The reality is that standing order 117 (h), as I recall, does say that a question that has been fully answered cannot be put again. If the opposition decides they want to push standing orders in the series of ways I have indicated, then of course they are going to be required to be held accountable to the standing orders by you.

Mr Speaker, in conclusion, for Mr Corbell to move dissent in the way he has in the middle of question time is just nonsense and it is part of the game that he is playing. It is the same game that he and his colleagues are playing when they stand up to take—

Mr Corbell: Thanks very much. You are a joke, Michael Moore.

Mr Quinlan: What humbug.

MR MOORE: Mr Speaker, every single one of those members has interjected loudly during my speech. It is exactly the same thing as when they stand up and take points of order that are not points of order and that you have warned them about again and again. Mr Speaker, I have to say it is entirely unsatisfactory. For Mr Corbell, who has been breaching standing orders the way he has, to stand up and move dissent, I think requires incredible gall.

MR SPEAKER: I remind members that we are debating a motion to suspend standing orders to enable Mr Corbell to move a motion of dissent. We are not actually debating the arguments. Strictly speaking, you were both out of order.

MS TUCKER (2.55): I would like to amend Mr Corbell's motion so that we ask you to report back here in the next sitting week with a considered view on whether or not it was the same question that was asked. You can have an opportunity to look at the detail and consider your ruling.

Mr Kaine: Let us suspend for 10 minutes so the Speaker can check the *Hansard*.

Mr Wood: No, you will hear that now. You are about to hear it.

MR SPEAKER: Order, please! Ms Tucker has the floor.

MR BERRY (2.56): Thank you, Mr Speaker. She did have the floor. I will read the questions to you, Ms Tucker. This is yesterday's question:

> This morning, ABC radio carried reports that the deadline for the payment of outstanding creditors of Pacific Academy Sports Trust had been extended … to 29 June 2001. The initial deadline … was set by the Chief Minister when calling in the development application and was 6 June 2001. That deadline was extended to 8 June 2001. All of those deadlines have passed without the outstanding payments being made to the creditors. … the government has taken no action.
>
> It was reported in the *Canberra Times* on 9 June that the minister saw no need to revoke the development approval. However, a spokesman for the Chief Minister is quoted in today's *Daily Telegraph* as saying, "The approval was conditional on the developer settling outstanding claims from contractors associated with stage one". Can the minister explain the contradiction between his statements that there is no need to revoke the call in and the statement of the Chief Minister … that the approval remains conditional? What action, if any, does the government propose to take if the fourth … deadline of 29 June is not met by Pacific Academy Sports Trust?

This is the supplementary question:

> Will the minister table any legal advice he has obtained in relation to revoking the calling in of this development approval?

Mr Humphries: That is it. That is the same question as today.

Mr Corbell: It is not.

MR BERRY: This is today's question:

> Minister, section 253 (a) of the Land (Planning and Environment) Act 1991 provides for the revocation of an approval if … is satisfied that the approval was obtained by fraud or misrepresentation. Will the minister confirm that this is the section under which he was advised by PALM that he might revoke the approval of the Lyneham tennis centre redevelopment? Will he table any such advice …?

That is a quite different question. I do not know whether we got to the supplementary.

Mr Humphries: No, we didn't.

MR BERRY: We didn't. Okay. So, will the minister table any advice from PALM? Mr Speaker, two entirely different questions. That is why we want to suspend the standing orders in order to move a motion dissenting from your ruling in relation to those matters.

Mr Speaker, may I also add to that. This general question needs to be discussed. I know Mr Moore would rather us genuflect and sing in chorus praises of him. You know, "All might to Michael". Mr Speaker, standing order 118 says:

> The answer to a question without notice:
> (a) shall be concise and confined to the subject matter of the question; and
> (b) shall not debate the subject to which this question refers …

The last time this Assembly went into turmoil in question time was for the very same reasons—that we are not getting the answers to our questions and the government is playing games. I think, Mr Speaker, that we are entitled to debate whether we have confidence in your rulings on these matters when these sorts of things occur. We see that your rulings, quite frankly, are not consistent with the questions that were asked in this place. Mr Speaker, I urge members to suspend standing orders in order that we can have a debate about this issue.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (2.59): Mr Speaker, beneath the many words which Mr Berry has just spoken there are a few words I would like to draw attention to. Again it is personal, isn't it. This personal invective is a good substitute for argument.

Mr Berry: No, no, Gary. We are being Gary-ed again.

MR HUMPHRIES: Yes, that's right. Mr Corbell asked:

> … will the minister table any legal advice he has obtained in relation to revoking the calling in of this development approval?

That is perfectly clear. Will he table any legal advice? The minister answered a page or so later, in fact two pages later, because almost the whole of those two pages were interjections from Mr Corbell, Mr Berry and Mr Stanhope. When he eventually gets to answer the question he says:

> …I have no written legal advice.

Mr Berry: No, no. I am not talking about legal advice.

MR HUMPHRIES: He says on page 46 of the uncorrected proof *Hansard:*

> I have no written legal advice.

Mr Hargreaves: It's not legal advice.

Mr Berry: We are talking about advice from PALM.

MR HUMPHRIES: He said, "I have no written legal advice." You did not ask where it came from. You said, "Have you got legal advice?"

Mr Hargreaves: Legal advice. We are not talking about legal advice.

Mr Berry: Today we asked about advice from PALM. We are being Gary-ed again.

MR HUMPHRIES: Mr Speaker, again the question is asked today: "What legal advice do you have? Is the section you rely upon section so and so?"

Opposition members interjecting—

MR HUMPHRIES: Mr Speaker, I draw members' attention to standing orders, in particular to standing order 117 (c) (iii), which says:

> Questions shall not ask ministers … for a legal opinion.

Mr Corbell has now asked on two successive days for a legal opinion.

Mr Corbell: I am not asking for a legal opinion, you goose.

MR HUMPHRIES: You asked for legal advice, which is the same thing. Legal opinion, legal advice, what is the difference? What is the difference?

Mr Corbell: Any advice from PALM. The minister said he got advice from PALM. The minister yesterday said he got advice from PALM.

MR SPEAKER: I would be loathe to warn you at this point, Mr Corbell, for constant interjections.

MR HUMPHRIES: Advice as to the effect of a section of the act. Does that sound like legal advice or does it sound like something else?

Mr Hargreaves: Something else.

MR HUMPHRIES: It walks like a goose, talks like a goose, and it looks like a goose, Mr Speaker. I think it is a goose.

Mr Speaker, we have seen question time used repeatedly by the opposition in this way. If standing orders are to be used for protection with respect to the way in which questions are asked, they should certainly be used when a question is repeated, now at least twice, and probably three times in the space of one week. I think the Assembly should not suspend standing orders because your ruling is appropriate in terms of the standing orders of this Assembly and they should be upheld.

MR RUGENDYKE: (3.02): It is neither here nor there really whether we suspend standing orders. We are having a debate of some sort. If members are counting on my position on this, I have complete faith in your rulings. The bigger issue here is the fact that we have three pages giving the daily program that we should be getting through. I am quite happy to stay here as long as it takes to get this done. There are three pages.

The other point, Mr Speaker, is that the throngs of people who regularly crowd our public galleries do not come to listen to the childish behaviour that we are hearing at the moment.

MR SPEAKER: Order! The time for debate has expired. I must therefore put the question.

Question put:

> That **Mr Corbell's** motion be agreed to.

The Assembly voted—

Ayes 6		Noes 11	
Mr Berry	Mr Wood	Mrs Burke	Mr Osborne
Mr Corbell		Mr Cornwell	Mr Rugendyke
Mr Hargreaves		Mr Hird	Mr Smyth
Mr Quinlan		Mr Humphries	Mr Stefaniak
Mr Stanhope		Mr Kaine	Ms Tucker
Mr Moore			

Question so resolved in the negative.

Questions without notice

Lyneham tennis centre

MR SPEAKER: Question time will continue.

MR CORBELL: I have a supplementary question. Each member is entitled to ask a question and a supplementary question.

MR SPEAKER: All right. Proceed.

MR CORBELL: Thank you, Mr Speaker. Yesterday the minister outlined to the Assembly that he had sought advice from PALM and that that advice was that he does have the ability to revoke the development application. Will he table that advice?

MR SMYTH: Again, Mr Speaker, that was verbal advice. I have no written advice that I can table.

Namadgi national park

MS TUCKER: My question is to the Minister for Urban Services in his role as having responsibility for environmental management in the ACT. Minister, on 26 May articles appeared in the media regarding the clearing of a 35 kilometre strip of native vegetation under power lines across the Kosciuszko National Park, Brindabella National Park, Namadgi National Park and the Bago State Forest. This included some 10 kilometres in the ACT. Once this became public knowledge your government and the New South Wales government condemned this action and called for legal action to be taken against Transgrid and its contractor. It has since come to light that this clearing happened over several weeks in February and March this year, and that no-one in authority seemed to do anything about it at the time. It was only after the story came out in the media that the issue received priority.

It is also the case that this area is not so isolated as was originally claimed. The power lines run close to the Blue Range mountain bike track, and cyclists have told us that they observed the clearing back in February. The power lines also run close to the Brindabella Road, so anyone driving up to Piccadilly Circus and Mount Franklin would have seen the clearing. We understand that at least one ranger saw the clearing back in February, but there appeared to be an assumption made that the clearing was authorised.

Could you explain, minister, what breakdown in regulatory responsibilities occurred which allowed this clearing to occur under the noses of Environment ACT officials, and why swift action was not taken at the time?

MR SMYTH: Mr Speaker, when the clearing was brought to the attention of Environment ACT action was taken immediately. It came to the attention of the department in late February. There was a lack of clarity as to whether or not federal or territory regulations applied in this case. Legal advice was sought. As soon as it was confirmed that it was in the jurisdiction of the ACT, action was taken.

MR SPEAKER: Do you have a supplementary question?

MS TUCKER: I understand that the New South Wales parliament is intending to establish an inquiry into the Transgrid clearing. Will you be fully cooperating with this inquiry or any other actions of the New South Wales government? Will you also be inquiring into why it was that there was confusion within your own department about whose responsibility it was?

MR SMYTH: Mr Speaker, there was no confusion inside the department about what might happen. What they had to confirm, though, was under which act the action might be taken—whether it was a Commonwealth responsibility or whether it was a territory responsibility. Once it was determined that it was a territory responsibility we did what we have to do. We have written letters to Transgrid. We have asked them to make amends to rectify the situation. Due process will then be followed to see what

should happen to a firm that has done a terrible deed there in Namadgi National Park and through the Brindabellas.

The government takes it very seriously. That is why we have the legislation there. We will use the legislation, if necessary, to force Transgrid to make amends, and, secondly, to apply penalties. In regard to the New South Wales inquiry, as the action has moved from across the border from New South Wales into the ACT, we will work with the New South Wales government in any inquiries that they intend to undertake.

TransACT

MR KAINE: My question is to the Treasurer in his capacity as a shareholder in Actew. In light of recent disturbing events in the telecommunications industry, of which I am sure the Chief Minister is well aware, my question goes to the viability of TransACT Communications Pty Ltd. This is a company which was originally established with public funding by Actew and is now jointly owned, according to TransACT's website, by Actew/AGL, the Hong Kong-based Telecom Venture Group, AGL, Marconi, Australian Capital Ventures Group, and TransACT Employees Holdings Pty Ltd. According to various media and other reports that TransACT apparently has already spent in the order of $130 million in setting up and rolling out fibre optic cable in and around Canberra, there appears to have been a lot of activity and certainly a lot of media hype, but getting hold of precise commercial information is rather more difficult.

Chief Minister, in view of the level of public interest in TransACT, what is the current exposure of taxpayers' funds in this company, what is the projected exposure of public funds in TransACT over the next couple of years, what has their total expenditure been over the past year, and what has their income been over the last year?

MR HUMPHRIES: Mr Speaker, I thank Mr Kaine for that question, some of which, of course, I am going to have to take on notice. The extent of Actew's investments, that is the public's investment in TransACT, is outlined in effect in the answer I have given before in this place about the extent of the ACT's shareholding via Actew in TransACT. That is, TransACT seeks to have that level of investment from Actew in it, and at this point, as I understand it, there is no further investment from Actew or any other part of the ACT government in TransACT. From time to time TransACT seeks additional capital to continue its work. I understand they have recently been looking for further capital, which is a matter they discussed with the government, but at this stage I believe TransACT is attempting to obtain that capital from other sources than government.

Mr Speaker, as for the projected exposure, at this stage I believe that to be the amount we have already invested in TransACT, but I will confirm that, Mr Kaine. I will take on notice the other parts of the question.

MR SPEAKER: Is there a supplementary question?

MR KAINE: Thank you, Chief Minister. I look forward to hearing the answer to that question. In seeking the answer to that question, would you also look at another aspect? There have been some disturbing reports about a poor response to the service

being offered by TransACT. Could you ascertain what the precise uptake of TransACT fibre optic connection by Canberrans is? How many paying customers within the Australian Capital Territory have they signed up at this stage?

MR HUMPHRIES: I will take that on notice.

Lyneham tennis centre

MR HARGREAVES: Mr Speaker, my question is to the Minister for sport and recreation, given that he is an expert on clay courts. A report in the *Canberra Times* of 30 May this year quoted the acting president of Tennis ACT, Mr Colin Mason, as saying that the ACT government had promised $500,000 towards the construction of clay courts at the Lyneham tennis centre whether or not the current redevelopment proceeds. Can the minister confirm that the government is to give this money? Is this grant of $500,000 additional to the $1.7 million already given to Tennis ACT for the project?

MR STEFANIAK: I thought I explained yesterday, John, that that $500,000 is the second part of what the ACT government is giving. It has already spent $1.2 million, which went to Tennis ACT, not Mr Hanna, in terms of the Rebound Ace courts. I understand that they have been built. The second $500,000 goes in this coming financial year to Tennis ACT for the clay courts, and again that goes to Tennis ACT.

Just to assist you out of a bit of confusion you seemed to have yesterday in terms of a draft tennis program, once the clay courts are built and they get a big tick in the box from Tennis Australia as being okay, which I am sure is no great problem, that is when we get the Australian men's and women's clay court championships. I think you will find that only Adelaide has clay courts, and they only have four.

MR HARGREAVES: My supplementary questions follow on from the information from the minister. Will the minister explain how the $1.2 million payments already made were constructed? Will the minister table a full and detailed acquittal of the $1.2 million paid so far, and has the government considered taking over the debts accrued to date by the developer?

MR STEFANIAK: I think I will take that on notice. He has asked for a bit of detail there, Mr Speaker.

Latham primary school

MR RUGENDYKE: My question is to the Minister for Education, Mr Stefaniak. Minister, since the burnout laws have been seriously watered down we have all noticed an increase in the incidence of burnouts in our city. A case in point is the serious damage which occurred overnight at Latham primary school where hoodlums caused many thousands of dollars worth of damage by burnouts on the school oval. Is the cost for the repair of the damage a departmental responsibility, or does it come under the umbrella of school-based management?

MR STEFANIAK: Mr Speaker, I was unaware that the burnout laws have been watered down. You will have to have a chat to me about that, Dave. Maybe we need to beef them up again. Whether they might work in this case is another thing entirely. I would hope that some of the excellent amendments to the Crimes Act which I introduced today might have some positive effect on these hoons who have created this damage to Latham Oval. I have been very concerned with things like this in recent times at our primary schools and high schools. I think this is a mindless, senseless act of vandalism. People who do it should be absolutely ashamed.

I understand that the school has repaired the grassed area already and that departmental officers are working with the school to see how we can alleviate this problem. One of the things might be by restricting vehicle access to the grassed areas. Despite the very best intention behind any law, including burnout laws, you probably are always going to get some people who are going to do the wrong thing. I think we can do something in terms of us fixing up access to the oval. One way might be to erect some barriers there.

If the government's budget is passed there is an extra $5 million for minor new works. Some of that might well be used for something like this because I have been concerned that that school, particularly, has had some significant vandalism. I have spoken to the school about that. Police patrols have been increased, and I think sometimes people have stayed overnight at the school. I am not too sure whether the perpetrators have been caught. They have come very close to being caught because of the efforts being made by police and staff at the school. I certainly hope that the perpetrators are caught and receive good solid penalties from the courts when they go in front of them. But we certainly have some capacity, Mr Rugendyke, in minor new works, and that is something the department is looking at. I think there will be ways we can assist there.

Williamsdale quarry

MR BERRY: My question is to the Chief Minister and it is in relation to the quarry at Williamsdale. Yesterday the Chief Minister was disinterested in my question about the favourable rebate provisions that were being made out there. He did not seem interested in answering the question. In fact, I think he rather scoffed that people in this place might be interested in those rebate rates.

Mr Moore: Is that a preamble, Mr Speaker?

MR BERRY: This is not the supplementary question.

MR SPEAKER: He is allowed to do it.

MR BERRY: Mr Speaker, this is the same Chief Minister who was a signatory to the order to Totalcare to sell 50 per cent of the quarry to a joint venturer, Pavement Salvage.

Mr Humphries: On Totalcare's advice.

MR BERRY: Mr Humphries interjects, "On Totalcare's advice." I am afraid not, Mr Humphries. Totalcare advise that they should hold up to 50 per cent. You said that they had to hold no more than 50 per cent. That is the difference.

Mr Moore: Questions shall be brief.

MR SPEAKER: I am just wondering when we are going to get to the question, Mr Berry. If you want to make a statement at some time you can ask for leave.

MR BERRY: Mr Speaker, I was responding to an interjection. I will give the Chief Minister the opportunity now to deny that there are any moves to sell all or part of the remaining part of the government's ownership of the Williamsdale quarry.

MR HUMPHRIES: Yes, I deny it.

MR BERRY: This is my supplementary question. This is the bit that I was telling you about earlier. How does the minister respond to this question: "Has CSR or Boral made any moves towards Totalcare?" and this answer: "The quarry has ongoing discussions with key players in the industry and these discussions are commercial-in-confidence"? That was a question that was put to the chair of the Williamsdale quarry and that was his answer. His answer was: "The quarry has ongoing discussions with key players in the industry and these discussions are commercial-in-confidence." How do you respond to that, Chief Minister?

MR HUMPHRIES: Mr Speaker, you can have lots of discussions about lots of commercial matters. That does not imply that the discussion is about sale. Mr Speaker, I am not aware of any moves on the part of Totalcare to divest itself of any part of the Williamsdale quarry. The government certainly has no advice of contemplation even of such an idea on the part of Totalcare. The government has no desire to see the quarry divested by Totalcare because it is a very profitable part of Totalcare's operations.

Disability services inquiry

MR WOOD: Mr Speaker, my question is to the Chief Minister. Chief Minister, what was the intention of Mr Gallop in providing you with an interim report of his inquiry into disability services? Was it for you to lock it away in a safe and dark place so that its contents and the need for any action remain unknown? Don't you give credit that a person of Mr Gallop's long and distinguished legal experience has the capacity to provide a report that avoids legal problems, though not perhaps administrative problems for your government?

MR SPEAKER: We are very deeply into standing order 117 (b).

Mr Wood: What is that?

Mr Smyth: Are you asking for an opinion?

MR HUMPHRIES: I cannot speculate about Mr Gallop's intentions, Mr Speaker. I have answered the—

Mr Wood: Not to advise you about problems?

MR HUMPHRIES: Indeed. Perhaps it was to advise me about problems. Perhaps he has effectively done that, but I do not know. Certainly, it has been given to me, Mr Speaker. This sounds very much like a re-run of yesterday's question. I answered yesterday as to why it is not being released at this stage. I repeat again that it will be tabled at the first available opportunity.

MR WOOD: I have a supplementary question, Mr Speaker. If the Chief Minister has an idea of when the coronial report will be presented, when does he expect that it will be made public?

MR HUMPHRIES: That is a matter for the Attorney-General. I do not know, but I will take that question on notice and see if I can find out.

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

Totalcare

MR HUMPHRIES: To continue with the Williamsdale quarry issue, on Wednesday Mr Berry asked whether Totalcare, through its joint venture company Williamsdale Operations, tendered for the Canberra Airport runway upgrade, and if not, why not? The answer to the question is no, it did not tender for the Canberra Airport runway upgrade. The reason is because neither Totalcare nor the Williamsdale hard rock quarry were invited to tender. Canberra International Airport Group went to a select tender process, inviting only those companies with a demonstrated track record, excuse the pun, and capability in upgrading airport runways. Neither Totalcare nor Williamsdale have the experience, the expertise or capability in this highly technical field. I am advised that Williamsdale would welcome the opportunity to supply aggregate and road base to the successful tenderer.

State of the Environment Report 2000
Government response and statement by minister

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services): Mr Speaker, for the information of members, I present the government's response to the Commissioner for the Environment's Australian Capital Territory *State of the Environment Report 2000*. I ask for leave to make a short statement in relation to this report.

Leave granted.

MR SMYTH: Mr Speaker, I am pleased today to table the government's response to the ACT Commissioner for the Environment's Australian Capital Territory *State of the Environment Report 2000*. It is a requirement of the Commissioner for the Environment Act 1993 that the commissioner, Dr Joe Baker, prepare and present to the government a report on the condition of our environment at regular intervals.

Members will recall that amendments were recently passed to the Commissioner for the Environment Act 1993 to ensure that a state of the environment report was prepared within each term of government. It was clear that in passing this amendment the Assembly wished to have an environmental report card available to it to inform policy-making. With this in mind, the commissioner's report was tabled on 2 May 2001, shortly after it was received. I have also brought the government's response here today as soon as possible.

This report represents the culmination of a massive amount of work by Dr Baker and his hard-working staff. The document you have before you is only the written executive summary of a much larger report, where the commissioner will bring together his findings under the following themes: atmosphere, biodiversity, land, human settlement, water and towards sustainability. The bulk of the work, amounting to hundreds of pages of information relating to specific environmental indicators, will be published electronically as part of the commissioner's Australian Capital Region report that is expected to be completed in mid July 2001.

Mr Speaker, this is the first time that this report will be produced both as a hard copy executive summary and in the CD format. The production of the report has been assisted by the development by the commissioner's office of the SoE Author software package that provides a standard template for the preparation of the ACT and each local government area report in the region. This approach is particularly innovative in the use of IT and has attracted local and international interest.

In summary the commissioner has found that the quality of the ACT's environment remains generally as good as in 1994 when the first report was made. The commissioner has also reported that "the Government has demonstrated significant leadership nationally, in finalising the ACT Greenhouse Strategy and commencing its implementation". He has also commented that the ACT is, and again I quote, "a pace-setter in other top issues, such as municipal waste management and waste water treatment". He has made, through his recommendations, a range of constructive suggestions about how we may continue to improve our environmental performance.

Mr Speaker, I am pleased to report that the government is able to agree to all but one of the 25 recommendations and will now work with the commissioner and other stakeholders on strategies for their implementation.

The government disagrees with the commissioner's recommendation about the need for an independent study of the extent and quality of ACT groundwater. Based on the advice from an independent expert scientific panel, the ACT has adopted a very conservative approach to groundwater management, allowing for the use of only 10 per cent of the recharge of any catchment. The government will commission studies of groundwater potential on a needs basis to effectively inform decisions about best water usage.

The commissioner also included in his report details of his 1997 report recommendations and his comments on government action in relation to his recommendations up to 30 June 2000. While most of these recommendations have been implemented to his satisfaction, the government will continue to address the

outstanding recommendations and provide updates on progress to the commissioner for inclusion in his annual report.

The commissioner also raised a number of matters of detail in relation to each of the report's themes that are not reflected in his recommendations. The government will continue to liaise with the commissioner to address these issues.

I formally table the government's response to the Commissioner for the Environment's Australian Capital Territory *State of the Environment Report 2000* pursuant to section 22 of the Commissioner for the Environment Act 1993.

Papers

Mr Smyth presented the following papers:

> Land (Planning and Environment) Act, pursuant to paragraph 229A (7) (b)—Statements relating to the revocation of:
> Development Application No 20010865—Stirling, dated 18 May 2001.
> Development Application No 20006987—Lyneham, dated 28 May 2001.

Transgrid
Paper and statement by minister

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

> Land (Planning and Environment) Act, pursuant to section 257—Executive order—Transgrid required to restore land altered without requisite approvals, dated 30 May 2001.

I ask for leave to make a statement.

Leave granted.

MR SMYTH: Mr Speaker, I wish to speak briefly to the executive order that I am tabling in the Assembly today. The Land (Planning and Environment) Act 1991 provides for the minister or the executive to issue orders requiring the restoration of any land, building or structure that has been altered without approval or permission required by an act or regulation.

Where the minister or his delegate makes an order, any person who is affected by that order may apply to the Administrative Appeals Tribunal for a review of that decision. If the executive makes the order, the Administrative Appeals Tribunal has no jurisdiction to review the decision. The act, however, requires the executive to table the order in the Assembly within three sitting days.

Members will be aware that Transgrid cleared to bare soil the land under its power lines in Namadgi National Park. Actions of this nature are clearly unacceptable to this government and we have responded in the strongest possible terms available. In

addition to the environment protection order issued to Transgrid under the Environment Protection Act 1997, the government has decided to make an order under the land act. The land act order requires that Transgrid repair the damage that it has caused in accordance with a program previously approved in writing by Environment ACT. Transgrid has until 15 June 2001 to have its repair program approved by Environment ACT.

I am pleased to inform members that Transgrid has lodged a program for the restoration of the vegetation and this program is currently being assessed by Environment ACT. Transgrid has already commenced essential restoration work under the watchful eye of Environment ACT. In the unlikely event that Transgrid does not repair the land in accordance with its approved program, I will have no hesitation in applying to the Supreme Court for the necessary injunctions to ensure that the work is completed.

Paper

Mr Smyth presented the following paper:

> Land (Planning and Environment) Act, pursuant to section 29—Variation (No 152) to the Territory Plan relating to the Community Facility Land Policies—Forrest section 24 blocks 1 and 3 (Part of St Christopher's Precinct Manuka), together with background papers, a copy of the summaries and reports, and a copy of any direction or report required.

Air pollution—wood heating
Ministerial statement

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services): I ask for leave of the Assembly to make a ministerial statement concerning air pollution and wood heating.

Leave granted.

MR SMYTH: Mr Speaker, I am pleased to provide a final report today on further action the government has taken in response to the Assembly's motion of 30 August 2000 on air pollution caused by wood heating.

Firstly, the motion called on the government to review the ACT's existing air pollution monitoring system to ensure that it is adequate for detecting concentrations of particles down to 2.5 micrometers in diameter, or $PM_{2.5}$, across Canberra on a continuous basis. The government is participating in a national review of the national environment protection measure for ambient air quality. This review is considering, amongst other things, the need for a standard for particles down to 2.5 microns. It is anticipated that the review will be completed in September 2001, and that the National Environment Protection Council will be making a decision to vary the measure in December 2001. The costs associated with purchasing new and as yet unspecified instrumentation necessary to monitor $PM_{2.5}$ is unknown at this stage.

Secondly, the motion called on the government to initiate an air pollution warning system to request households with wood heating to use alternative forms of heating, where practical, on days of high air pollution. This is similar to the "Don't light tonight" program run by the New South Wales Environment Protection Authority. This winter an air pollution warning system will be trialled in the ACT. Environment ACT will issue warnings to the public after analysis of data supplied by the Bureau of Meteorology. It is estimated that there could be as many as 12 warnings over the winter of this year.

The ACT firewood strategy will continue to be promoted. Elements of this strategy include community education on best practice firewood selection and operation of firewood heaters.

Thirdly, Mr Speaker, the motion called on the government to investigate measures that the ACT could adopt to assist low income households which rely on wood heating to install less polluting heating systems. The ACT Council of Social Services has expressed concern with this proposal. The conversion of firewood heaters to less polluting heating systems has implications for those low income households who may face a higher recurrent cost of natural gas or electricity following conversion. Concern was also raised that private rents may be increased as the result of the conversion.

The government has in place several initiatives aimed at reducing household space heating requirements. These include the public housing retrofit program, which will improve the energy efficiency of a proportion of ACT Housing's detached housing stock, and the Energy Advisory Service providing free advice on how to reduce heating costs. These initiatives have the potential to reduce the amount of firewood used in the ACT. The government will not be proceeding with the proposed conversion assistance scheme.

Mr Speaker, the government has responded to the Assembly's motion on air pollution from wood heating, and will continue with ongoing efforts to educate the community on the efficient use of wood burning heaters. These actions will make a significant contribution to improving Canberra's air quality.

Children and Young People Act—review of therapeutic protection orders

Paper and statement by minister

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

> Children and Young People Act, pursuant to section 245—The terms of reference for the review of Therapeutic Protection Orders.

I ask for leave to make a short statement on behalf of Mr Moore, the health minister.

Leave granted.

MR SMYTH: Mr Speaker, I have pleasure in presenting the terms of reference for the review of therapeutic protection orders, Children and Young People Act 1999.

Therapeutic protection orders are highly intrusive orders that entitle welfare authorities to confine a young person to prevent self harm or harm to others in order to provide a particular treatment or therapy under the Children and Young People Act 1999. The legislation recognises that the type of action the chief executive of the Department of Education and Community Services may take when providing therapeutic protection for a child or young person includes restricting exit from a place, using reasonable force, personal searches, close or constant supervision, and restriction on contact.

The act requires the minister to review the operation of the act in relation to therapeutic protection to determine whether therapeutic protection is being provided in appropriate cases and appropriate ways and to evaluate the effectiveness of therapeutic protection orders.

The chief executive of the Department of Education and Community Services has not commenced any such applications. Other parties, including the Children's Magistrate, have raised whether such an order should be sought. On each occasion there was insufficient evidence produced to support an application for therapeutic evidence, with the court accepting that less intrusive strategies should be utilised.

The chief executive, in anticipation of and in preparation for the making of such an order, has commenced arrangements to ensure that adequate structures and proper financial resources are available. These resources would be provided in circumstances where this type of order was deemed to be in the best interests of the child or young person. I commend the terms of reference to members.

Court Security Bill 2000
Detail stage

Debate resumed from 1 May 2001.

Clauses 1 to 4, by leave, taken together and agreed to.

Clause 5.

MR STANHOPE (Leader of the Opposition) (3.39): I move amendment No 1 circulated in my name *[see schedule 2, part 1, at page 1973]*. Mr Speaker, as it is some time since we debated the in-principle stage of this bill, it is appropriate that I briefly provide the context to this amendment and other amendments that I will be moving.

During the in-principle debate I said that the Labor Party believes that the courts must be secure places. It is well recognised that the courts are one of the fragile cornerstones of our democracy. The judicial arm of government is an important check and balance on the executive and the legislature. The judiciary is required, by and large, to operate in the full view of the public. We had this sort of debate yesterday and I think we need to take further the relationship between the different arms of government.

Any limitation on that requirement beyond what is essential for the administration of justice—for example, the Children's Court—is a limitation on our collective freedom and our democratic system. Any person who wishes to attend a court hearing to see what is happening must be permitted to do so for no better reason than that—that they wish to see what is happening in the courts.

Some of my amendments go to the heart of that principle—to ensure that the courts remain open to the public. Despite this requirement to operate in the public gaze, the judiciary, the administrative staff and members of the public who either must be in a court or simply wish to be there, are entitled to attend to their daily activities in safety, free from fear of attack, just as the rest of us expect when we go about our business. The only dispute I have with the government's bill is its approach to how this safety is to be assured.

The former Attorney-General suggested in his presentation speech that the bill was introduced because court staff expressed concerns about the limitation of their current powers to deal with court security issues. It has been suggested to me that this may be a matter that could be adequately addressed by training or educating court staff in respect of their powers. It seems that the former Attorney suggested that judges or magistrates did not know what their powers are.

In any case, this bill does not address those concerns. It does not spell out what powers existing staff might have, or actions they could take, to eject troublemakers. Instead, it sets up a regime of armed security guards with extraordinary powers. But to whom are they accountable? They are not accountable to the court. It could be implied that they are accountable to the chief executive who appoints them and who can revoke that appointment. But even that is far from certain.

It should be remembered, Mr Speaker, that the chief executive has no direct responsibility for the courts. That responsibility lies with the chief judicial officer of each of the courts. Under section 7 of the Supreme Court Act the Chief Justice is responsible for the orderly and expeditious discharge of the business of the court. The Chief Magistrate has a similar responsibility expressed in section 10G of the Magistrates Court Act.

I suggest that the Chief Justice and the Chief Magistrate should be responsible for arranging the security of the courts. They can discharge this responsibility through their respective registrars, who have a statutory obligation to perform such functions as the court may direct.

In my amendments I am proposing that the chief judicial officers have power to contract security firms. I understand, for instance, that Chubb Security currently provides a service under contract to the courts. I am also proposing that any contracts that they enter must contain certain provisions, including that the objectives of the security service are articulated, the performance standards expected are embedded in the contract, and the contractor be subject to the FOI Act and the Ombudsman Act for services provided to the court. I have not included the Privacy Act because I do not expect a security service to be collecting personal information. The Commonwealth has amended that act to apply to the private sector generally.

As I said, Mr Speaker, this is a completely different approach to that taken by the government. The Labor Party understands the need for security in the courts. But unlike the government, we believe the courts should be in charge of the security. The chief judicial officers and their registrars should take charge and be accountable for what happens in the provision of that service.

It is self-evident, of course, that if members accept this approach then they will support my amendments. Other amendments will be moved today, particularly by Mr Rugendyke and the Attorney. There is some overlapping of the amendments and we will have to deal with that complexity.

My amendment No 1 relates to clause 5 of the bill. Clause 5 in the government's bill provides, under a number of circumstances, for the right of a person to enter and remain in an area of court premises that is open to the public. The first circumstance is that the person complies with all orders made by the judge or magistrate, et cetera. That is quite consistent with what I am proposing. Secondly, the clause provides that the person complies with all requirements made by a security officer under the act; and, thirdly, that if the person wishes to enter or remain in a courtroom where a court is sitting or about to sit there is seating for the person in the courtroom.

It is my contention that it would be more appropriate to amend the second consideration by providing that a person may remain in a court if the person complies with the appropriate security guidelines. In my amendments, which I will come to later, I provide for a regime whereby the judicial officer in charge of either the Supreme Court or the Magistrates Court—in other words, the Chief Justice or the Chief Magistrate—is required to arrange or provide for the making of security guidelines. Therefore, the person's capacity or right to remain in the court would be as per those security guidelines.

The amendments provide for consistency in the overall scheme that I am proposing—namely, that the court accept responsibility for the provision of security, that the court arrange for security guidelines to be developed, and that the court arrange for the circumstances in which those security guidelines are administered.

Similarly, I think the government's proposal that a person cannot remain in a court if there is no seat available is unnecessarily restrictive. There will be certain circumstances in some courts—I am sure it will not arise often—where it would be quite appropriate for a person to stay.

To make sense of my amendments, one needs to understand the overall scheme that I am proposing. I will leave it at that and commend amendment No 1 to the Assembly.

MS TUCKER (3.48): I would like to make a couple of general comments on Mr Stanhope's amendment to clause 5. We voted against the bill during the in-principle stage on the grounds that no clear need had been demonstrated for what we saw as very draconian powers. Since that time we have spoken with the Domestic Violence Crisis Service and other community organisations that regularly support clients in the Magistrates Court. We have also spoken with the Registrar of the Magistrates Court.

Consequently, I can see that there is a need for some kind of security arrangement. I can see the need to allow the court to employ appropriately qualified and trained guides and officers who can ensure that weapons are not brought into the courts or into the immediate vicinity of the courts, and who are able to defuse potentially dangerous situations without resorting to physical force. Domestic violence cases in particular involve victims of the crime having to come into close proximity to the offender, and this is often frightening and dangerous.

The Domestic Violence Crisis Service will arrange a police escort and other security measures in cases where they expect a particular danger. However, there are also occasions when the unexpected occurs or when police cannot attend a hearing. There are substantial problems with the way the bill seeks to address this need. The scrutiny of bills committee pointed out a range of problems and, through consultation, other members have developed quite a few amendments. However, there are so many problems with the legislation that it would have made more sense for the government to take it back and start again. Obviously the government is now amending its own legislation. The bill we have is not as good as it could be, and I am not quite sure what we will end up with as a result of all of these amendments.

There are other legislative models in Australia which address this problem. I have looked at the Victorian legislation and I have to say it is a bit surprising that the government chose to propose legislation which included some of what we would consider to be the more aggressive elements of the Victorian model but which did not include the elements that ensure that the arrangements for security officers are open, that the lines of authority are clear and ultimately rest with the court, and that there are avenues for appeal through FOI and through the Ombudsman.

Anyway, we will work with what we have before us today and hope that we end up with a reasonable piece of legislation. We will be supporting Mr Stanhope's first amendment, which seeks to remove any ambiguity about the power of a security officer. The amendment would also require people to comply with the appropriate security guidelines which, as defined in Labor's amendment No 12, are to be made by the relevant authority of the court.

Labor's amendment No 1 seeks to omit paragraphs (b) and (c) of clause 5 and substitute paragraphs which broaden the "if there is no space, you cannot come in" provision to all areas of the court and find room in the court for seating.

MR STEFANIAK (Minister for Education and Attorney-General) (3.51): Mr Speaker, I also have amendments to move to the bill. I also intend to give an overview of the legislation because, as Mr Stanhope rightly says, it has been quite a while since we debated this bill—it has had more starts than Phar Lap and has not quite got past the post.

MR SPEAKER: We have to settle Mr Stanhope's amendment No 1 first.

MR STEFANIAK: Very good, Mr Speaker. I will do that but I will also indicate the government's position. As I advised Mr Stanhope yesterday, we will be supporting Mr Rugendyke's amendments. We will be amending one of his amendments to ensure that clauses 9 (3) and 9 (4) are retained. I will be moving all of my amendments, with

the exception of amendments 3 and 4, which will not be necessary as a result of us supporting Mr Rugendyke's amendments.

I hear what Ms Tucker says. Perhaps what we have ended up with is not absolutely ideal but, having looked at this quite closely, I think the legislation will very much be workable. I will speak to Mr Rugendyke's amendments when he moves them. In speaking to Mr Stanhope's amendment No 1, I will also cover his amendments 2 and 8 to 16. I will speak to his amendment No 3 when he moves it.

Mr Stanhope's amendments Nos 1 and 2 and 8 to 16 would introduce a new requirement for security officers, other than sheriffs or the police, to be employed under a court security agreement, which would need to comply with legislative requirements in proposed sections 6A to 6D. I do not think it is really clear how this requirement would afford court users greater protection than would the government's proposals, because under the government's proposals it is also envisaged that private security firms would be contracted to provide security services in accordance with the act. Given the existing requirements for accountability and reporting on government contracts, it really is not clear how legislating for the form of that contract will improve transparency, accountability or even consistency with normal government purchasing guidelines. So whilst I can see what Mr Stanhope is getting at, I think there are better ways of doing it.

Labor amendments 1 and 2 and 8 to 16 envisage that the courts will be able to develop security guidelines. It could certainly be argued that leaving it to unelected court officials to determine security arrangements for the courts in fact provides less certainty and transparency for citizens than spelling out the security requirements in legislation enacted by a democratically elected Assembly. It is certainly not clear whether the guidelines would be disallowable, how they are to be published, what matters they cover, and how they would be enforced. In effect, the Assembly would be handing the court a blank cheque.

It is not enough just to make the contractor subject to the FOI Act and to hand the Ombudsman the job of monitoring the security company's performance, which we say would be the effect of Labor's proposed new sections 6B and 6C. We feel the Assembly should not abdicate its responsibility for deciding how to secure the safety of our courts.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

MR STEFANIAK (Minister for Education and Attorney-General) (3.58): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 1, part 1, at page 1971]*. This amendment seeks to omit paragraph (b) of clause 5 (1) and substitute a new paragraph.

Mr Speaker, paragraph (b) reads:

> the person complies with all requirements made by a security officer under this Act; and

My amendment proposes that that paragraph be omitted and the following paragraph be substituted:

> the person complies with all the requirements made under this Act by a security officer; and

The amendment simply makes it clearer that a person must comply with the requirements, imposed under the proposed act, by the security officer. This in fact reflects a suggestion that the scrutiny of bills committee made.

Mr Speaker, I present a supplementary explanatory memorandum to government amendments to the bill.

MR STANHOPE (Leader of the Opposition) (3.59): The Labor Party supports the amendment.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (4.00): Mr Speaker, I move amendment No 2 circulated in my name *[see schedule 1, part 1, at page 1971]*. This amendment, which was suggested by Parliamentary Counsel, removes a reference to an act that is to be repealed.

MR STANHOPE (Leader of the Opposition) (4.01): The Labor Party supports the amendment.

Amendment agreed to.

Clause 5, as amended, agreed to.

Clause 6 agreed to.

Proposed new clauses 6A to 6D.

MR STANHOPE (Leader of the Opposition) (4.02): Mr Speaker, I move amendment No 2 circulated in my name *[see schedule 2, part 1, at page 1973]*. This amendment seeks to insert new clauses 6A to 6D inclusive. These clauses are effectively at the heart of the scheme that I propose be instituted for the provision of security in the courts. They in effect explain the nature of the arrangements that I propose for the better security of both the Supreme Court and the Magistrates Court.

These amendments allow for a contract system of security. They set out the terms and conditions of contract and provide for specific details, particularly in relation to the objectives in performance and reporting that will relate to the security standards.

As I explained before, Mr Speaker, these provisions impose on the courts the obligation to enter into an agreement or arrangement with a contractor for the provision of security services to the court. What that does is set out quite explicitly that the responsibility for the security of the courts is that of the Chief Justice of the Supreme Court and the Chief Magistrate of the Magistrates Court. That, to my mind, is quite clearly where the responsibility should lie.

As I indicated before, both the Chief Justice of the Supreme Court and the Chief Magistrate of the Magistrates Court have a clear statutory responsibility for the management of all aspects of their courts. I have made the point that the government's proposal and the government's legislative scheme in effect invests in the chief executive of the Attorney-General's Department responsibility for the management or arrangement of security services for each of those two courts. My contention is that that simply is not appropriate. This longhand arrangement for security of the Supreme Court and the Magistrates Court, whereby the chief executive of the Attorney-General's Department has responsibility over and above that of the Chief Justice and the Chief Magistrate, is not appropriate.

Surely, the judicial officers charged with the legislative responsibility for the management of those institutions should be responsible for this very important aspect of management, namely security. This scheme charges both the Chief Judge and the Chief Magistrate to develop security guidelines that set out every aspect of the security arrangements that they believe are appropriate to apply in their courts.

What could be more reasonable than that—that it is for the Chief Justice and the Chief Magistrate to decide, to determine, the precise nature of the security arrangements that should apply in their courts? It is for them to decide the basis on which people should be permitted to enter the courts, the conditions that should apply to their entry, the circumstances in which they may be refused entry or ejected and the steps that they should take to ensure the security of everybody who enters their courts—all of those people who work in the courts, all of those people who participate in the business of the court and all of those members of the public who enter the courts for the simple sake of observing justice in action. I think this is a responsibility that is rightly invested in the courts and should not be delegated to some other official.

I referred briefly in my earlier comments to some of the separation of power issues that apply in relation to the need to separate the role and responsibility of members of the executive or the government and that of the courts. The Chief Justice and the Chief Magistrate have been invested quite specifically under their enabling legislation with

the responsibility of administering courts, and they should administer this most basic function. I think it is for the Chief Justice and the Chief Magistrate to accept responsibility for every aspect of the security guidelines. It is for them to decide the terms on which a person can be ejected, searched or questioned about what it is that they are doing in the precincts of the court.

These provisions go to the arrangements for making court security agreements. They set out the responsibility for the administration of those agreements and they provide, quite appropriately—and Ms Tucker touched on this—for the application of the Freedom of Information Act and the Ombudsman Act in respect of the exercise of powers of security officers.

I do not hesitate to acknowledge that these provisions are modelled very much on the Victorian legislation, which we also looked at in our investigations and studies when we received this bill from the government. We came to the same conclusion that Ms Tucker has mentioned—that it seemed to us that the Victorians have developed a security model for courts that quite easily could have been much better utilised than what the government has chosen to do. I do not know why the government did not follow the Victorian model more fully. If they had I think we would have had a far better piece of legislation and each of us, in our own way, would not be now seeking to make this court security legislation more acceptable so that it can be in the best interests of this community.

In conclusion, I would like to refer to proposed new clause 6D. This clause provides quite specifically that the powers that a security officer has under the act can only be exercised in accordance with the appropriate security guidelines. I think it is important that that accountability be there. Once again, the accountability rests with the Chief Justice or the Chief Magistrate through their registrars. It is for the Chief Justice or the Chief Magistrate to determine whether the security officers in their courts are acting and behaving appropriately in the way they deal with people who seek access to those courts.

The right or the capacity of citizens simply to attend a court out of interest is a fundamental principle of justice. The activities of the court always need to be open to scrutiny. If we are to deny anybody that opportunity then it must be under explicit terms and conditions and where there is a clear chain of accountability.

MR STEFANIAK (Minister for Education and Attorney-General) (4.08): I have already spoken about this amendment. The government would say that leaving the determination of court security arrangements to unelected court officials rather than spelling out the security requirements in legislation enacted by a democratically elected Assembly in fact provides less certainty and transparency for citizens.

There are a number of issues here. I talked about whether the guidelines would be disallowable under Mr Stanhope's proposal, how they are to be published and how they are to be enforced. We would certainly have some concerns about the Assembly handing the courts a blank cheque. Whilst there are some protections under the FOI Act and the Ombudsman Act, I do not think it is really enough to make a contractor subject just to that legislation. The effect of these proposals would be to hand the Ombudsman the job of monitoring a company's performance. We feel that the

Assembly should not abdicate its responsibility for deciding how to secure the security of the courts.

MS TUCKER (4.09): We will be supporting the amendment, which seeks to add to the bill a list of provisions to be included in the contract between the relevant authority of a court and the security provider. These include some basics, such as the fee to be paid in compliance with this act and every other territory act. But also, importantly, provision is made for the Freedom of Information Act and the Ombudsman Act to be applied to security arrangements for courts.

As Mr Stanhope said, these provisions are similar to those in the Victorian act and it is surprising that the government did not include similar arrangements in the first place. I understand that there is a bit of a tussle going on between the department and the courts as to whose responsibility it should be. But we are comfortable with that responsibility resting with the courts.

MR STANHOPE (Leader of the Opposition) (4.10): I would like to very briefly respond to a couple of comments that the Attorney made. I think his claim that the bill as it stands enhances accountability is not justifiable in the circumstances. I do not believe it does that at all.

The Attorney suggests that the Assembly would in some way be abrogating its responsibility for security arrangements if it were to accept the amendment. I do not think the position the Attorney has adopted would enhance the accountability arrangements of security guards or the provision of security services in the courts. I just do not see the logical connection between the two.

The Attorney also made the point that the arrangements will be far more open, and he regards this as a tenet of accountability. I would have thought there probably are a range of guidelines that one would impose or insist on in relation to security guidelines that in fact should not be made public. So I do not accept some of the assertions the Attorney makes in relation to this.

MR RUGENDYKE (4.11): I indicate that, based on the speech given by the Attorney, I will not be supporting this amendment.

MR KAINE (4.12): I support the amendment put forward by the Leader of the Opposition. I think this is too important a matter to be left to arbitrary determination by a security officer who, in many ways, can be anyone. I think it is reasonable to set down the arrangements under which security officers will operate. I think the amendment sufficiently specifies and determines the powers of security officers. I think we would be derelict in our duty if we did not incorporate this sort of provision in the act.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Proposed new clauses 6A to 6D negatived.

Clause 7 agreed to.

Clause 8.

MR RUGENDYKE (4.16): Mr Temporary Deputy Speaker, I oppose clause 8.

MS TUCKER (4.17): Under clause 8 a person may be required to give their name to a security officer. Subclause (1) states:

> A security officer may require a person entering or on court premises—
>
> (a) to tell the officer the person's name and address; and
>
> (b) to tell the officer the person's reason for entering or being on the premises; and
>
> (c) to give evidence of the person's identity to the officer.

The Greens will not be supporting this clause because we feel that this is an undue intrusion. I understand that the scrutiny of bills committee report said it represents an undue trespass on the rights of people to enter public courts—that is, those which are not closed or restricted to the public for other reasons. For this reason, we will be opposing the clause.

MR STANHOPE (Leader of the Opposition) (4.19): Mr Temporary Deputy Speaker, I move amendment No 3 circulated in my name *[see schedule 2, part 1, at page 1973]*. I share the concerns that Ms Tucker has about clause 8. From what Mr Rugendyke has just said, I assume that he will oppose the clause.

My objection, which shadows the objection that Ms Tucker made, is that the government proposes to give a very open-ended and powerful discretion to a security officer. A person entering or on court premises may be required to tell a security officer their name and address, their reason for entering or being on the premises, and to give evidence of their identity.

The scrutiny of bills committee made a detailed and quite lengthy analysis of this provision and expressed its concern that provisions such as this are very unusual and that this is an extremely rare exception to the understanding that powers of this sort will be invested only in police officers. I do not remember explicitly the discussion that took place within the scrutiny of bills committee, but I think it would be worthwhile if every member of the Assembly reflected on the extent to which a seemingly simple provision such as this invests in a security officer, who is not a police officer, a power to make these sorts of demands of citizens. It is an incredible departure from accepted practice and understanding, at least in Australia and in other common law countries, that this sort of power is restricted very much to members of the police forces. These are not appropriate powers to invest in security officers or other people within the community. These are powers that have, for very good reason, traditionally been restricted to police officers.

My amendment seeks to ensure that at least a security officer should have reasonable grounds before even bothering to approach a person. It is simply not good enough to provide in legislation that a person whose behaviour is perhaps unusual in the eye of a security officer should then be subjected to treatment that amounts to an invasion of their right to privacy. We invest these rights in police officers and we do that for good reasons. There are very good reasons for not spreading these sorts of powers more widely.

My amendment proposes that if a security officer believes on reasonable grounds that a person entering or on court premises is behaving unlawfully—there have to be reasonable grounds for believing there is unlawful behaviour—is behaving in a disorderly or menacing way or is a threat to court security in those circumstances, then it is quite reasonable that the security officer should be able to ask for the person's name and the person's reason for entering or being on the premises. We think this should be the extent of the security officer's powers.

The amendment seeks to include a couple of supplementary provisions. It provides that a person must not, without reasonable excuse, fail to answer a reasonable request of a security officer in circumstances where that person is quite obviously acting unlawfully or in a disorderly or menacing way.

MR STEFANIAK (Minister for Education and Attorney-General) (4.22): Mr Rugendyke will probably support Mr Stanhope's amendment. I have no difficulty with what Mr Stanhope said. The government certainly has read what the scrutiny of bills committee said in criticising clause 8. Indeed, both the scrutiny of bills committee and ACT Legal Aid criticised clause 8 as being invasive of privacy and they said it could be omitted without unduly comprising the security of the courts.

I think it should be noted that if there are grounds for believing that persons on court premises have committed an offence, the police will be able to use the power under section 349V of the Crimes Act 1900 to ask that person to provide a name and address and to do certain other things.

I hear what Mr Stanhope is saying. I think he made some valid comments about police officers. Certainly they should have certain powers and responsibilities which other officials should not have. There is some strength in that argument.

I indicated earlier that the government will not be proceeding with its amendment No 3 to clause 8. We are quite comfortable in supporting Mr Stanhope's amendment.

MR KAINE (4.24): Mr Temporary Deputy Speaker, I must say that my intention is to oppose this clause entirely. While Mr Stanhope's amendment seeks to make the clause more acceptable, it is fascist for the bill to propose that if I set foot inside the precinct of a court, somebody can ask me for my name and address without any justification whatsoever. So my intention is to oppose the clause entirely.

As I say, Mr Stanhope's amendment seeks to tone down the clause a bit. At least the amendment says the security officer has to have reasonable grounds for asking me in the first place, and I am not too sure what those grounds might be. But I think this is a gross intrusion into my civil liberties and those of anybody else who chooses to set foot in one of our courts of law. I cannot imagine why the government put the clause in the bill in the first place. As I said, I will be voting against it.

MS TUCKER (4.25): As I have already said, I would prefer to see the clause go altogether. I agree with Mr Kaine. I understand what Mr Stanhope is doing. He is reducing the amount of information that can be requested to the name only and putting conditions around that. So I will support Mr Stanhope's amendment just in case we are not successful in deleting the whole clause.

MR RUGENDYKE: (4.26): Mr Temporary Deputy Speaker, as you are aware, my intention was to support the deletion of this clause, based on my belief that security officers should not have greater powers than police. However, I defer to the wisdom of the Leader of the Opposition and I agree that his amendment is a wise move. I will support the amendment.

Amendment agreed to.

Clause 8, as amended, agreed to.

Clause 9.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): For the information of members, I advise that six amendments have been received in respect of clause 9—three from Mr Rugendyke, two from Mr Stefaniak and one from Ms Tucker. Standing order 133 provides that complicated questions may be divided on the order of the Assembly.

Ordered that the question be divided.

Subclause 9 (1).

MR RUGENDYKE (4.29): Mr Temporary Deputy Speaker, I move amendment No 2 circulated in my name *[see schedule 3 at page 1980]*. This amendment removes the ability of security guards to perform a frisk search. Once again, this is in line with my previous position.

MR STEFANIAK (Minister for Education and Attorney-General) (4.30): Mr Rugendyke's amendments Nos 2 to 4, and his amendment No 6, all deal with the power of security officers to search persons on court premises. The amendments would omit the power to conduct a frisk search—that is, a pat down of a person—but the power to conduct a screening search would be retained. Screening searches—that is, using electronic devices—have proven to be very effective at Australian airports, and the loss of the power to conduct frisk searches should not compromise court security. Of course, the police will retain powers under the Crimes Act 1900 to frisk search persons who are suspected of committing an offence in a court.

Mr Rugendyke's amendments would also remove the power of security officers to open and search bags or briefcases, but a security officer, of course, would still have the power to require that any such bag or briefcase be left with a security officer if he or she believes it might contain an offensive weapon.

I understand that the last time or the second last time this matter was before the Assembly, my officers had discussions with Mr Rugendyke in relation to clause 9, and it was agreed that subclauses (3) and (4) be retained. Subclause (3) is an important safeguard to prevent abuse of the search power and subclause (4) gives the search power teeth by making it an offence for a person to refuse to comply with the requirement or leave the court. Without that, of course, the search powers cannot be enforced. But we are certainly quite comfortable with Mr Rugendyke's amendment in relation to frisk searches.

MS TUCKER (4.31): We will also support the amendment. Mr Rugendyke's argument is largely that the police do not have these powers in public places and therefore private security forces should not. While this is a concern in that it represents increased powers with potentially less accountability, the power to refuse someone entry if they do not submit to a frisk search clearly has the potential to intrude on a person's right to enter public court premises unhindered. So we will support this amendment to remove the power to frisk search.

MR STANHOPE (Leader of the Opposition) (4.31): The Labor Party will support the amendment.

Amendment agreed to.

MR RUGENDYKE (4.32): Mr Temporary Deputy Speaker, I move amendment No 3 circulated in my name *[see schedule 3 at page 1980]*. This amendment removes the ability of security guards to search bags, containers and anything else that people carry into courts.

MS TUCKER (4.32): The Greens will not be supporting this amendment. Subclause (1) grants security officers the power to search bags or other items in a person's possession. We have decided to support the subclause for a number of reasons. It was a difficult decision. On the one hand, there is a case against security officers having this power and a concern about the potential disruption that could be caused by searching lawyers' bags or the bags of people representing themselves. On the other hand, without the power to search a bag, a security officer is only able to request that

a bag be left with them, or that the person leave the premises if they reasonably suspect that the bag contains a weapon or explosive, et cetera.

I assume that there is nothing to stop the security guards requesting that someone open their bag if the screening device beeps, but they will not have the authority to require someone to do so. We would not have a problem of excessive intrusion if we had conveyor belts of the type found at airports and Parliament House to screen possessions. However, the government has said that they do not plan to have a permanent security presence at the courts—that that would cost money. So presumably we are only talking about hand-held screening devices. On the whole, this question has not been well thought out.

Without this subclause, there is no middle ground. There is no legal way for a security officer to open and check a bag that it is believed may contain an explosive device. While opening the bag is an intrusion, it is firstly a less confronting option than the choice of leaving your bag or leaving the court; and, secondly, in the absence of the conveyor belt screening system, it will ensure that bags are checked.

MR STANHOPE (Leader of the Opposition) (4.34): I indicate, Mr Temporary Deputy Speaker, that the Labor Party has exactly the same attitude as Ms Tucker and the Greens to this provision. We understand Mr Rugendyke's motivation but we have the same view of the matter and the issue as do the Greens.

MR STEFANIAK (Minister for Education and Attorney-General) (4.35): I have heard what members have had to say. In line with the comments made by Ms Tucker and Mr Stanhope, it is probably on balance preferable to leave the subclause as it stands. I think that is a quite reasonable position.

Amendment negatived.

Subclause 9 (1), as amended, agreed to.

Subclause 9 (2).

MR TEMPORARY DEPUTY SPEAKER: Mr Stefaniak, do you wish to move your amendment No 4?

MR STEFANIAK (Minister for Education and Attorney-General) (4.38): Mr Temporary Deputy Speaker, the Assembly has just voted to take the words "frisk search" out of clause 9 (1) (a). There is a reference to frisk search in clause 9 (2) and it would be logical to knock those words out of that clause as well. That is what Mr Rugendyke intended should happen, and he has the support of a majority of members.

Mr Temporary Deputy Speaker, my amendment No 4 to Mr Rugendyke's proposed amendment reads:

> Omit "(2) to (7)", substitute "(2) and (5) to (7)".

MR RUGENDYKE (4.39): Mr Temporary Deputy Speaker, I think you will find that the majority of members will support this, given that it has been agreed generally in discussion that subclauses (3) and (4) ought to be kept. Some have been lost and some ought to be kept. In view of the discussions that we have all tried to have with each other, subclauses (3) and (4) ought to be kept. So I personally support this amendment to my proposed amendment.

Mr Kaine: So the net result is that subclauses (2), (5), (6) and (7) are deleted.

Mr Stefaniak: That is right. We keep (3) and (4).

MR TEMPORARY DEPUTY SPEAKER: Because the matter is being divided, we will deal with the subclauses seriatim.

Subclause 9 (2) negatived.

Subclause 9 (3).

MS TUCKER (4.46): Subclause (3) states:

> A security officer may make a requirement under this section only if the officer believes on reasonable grounds that it is necessary to make the requirement in the interests of court security …

We understand that this can refer to the search of a bag.

Mr Rugendyke: We won that one.

MS TUCKER: I am arguing that we should keep subclause (3).

Subclause 9 (3) agreed to.

Subclause 9 (4) agreed to.

Subclause 9 (5).

MR STANHOPE (Leader of the Opposition) (4.48): Because security officers are searching bags, I think clause 9 (5) remains relevant and the Labor Party will support it.

MS TUCKER (4.48): I agree that this subclause should stay. It contains important criteria on how bags searches should be undertaken.

Subclause 9 (5) agreed to.

Subclauses 9 (6) and 9 (7), by leave, taken together.

MR STANHOPE (Leader of the Opposition) (4.49): Mr Temporary Deputy Speaker, I agree that subclause (6) should be deleted as I believe it is no longer relevant. I think subclause (7) should probably be retained but it requires an amendment. I draw to the Attorney's attention that subclause (7) probably needs to be retained.

I am not quite sure what will happen in relation to the drafting. If subclause (6) were to be deleted then the words "apart from subsection (6)" in subclause (7) would be redundant. It seems to me that the rest of the subclause is relevant and it should be retained. But I do not quite know the procedure in these circumstances.

MR STEFANIAK (Minister for Education and Attorney-General) (4.50): I am advised by my officers that subclause (7) attaches itself to subclause (6). I hear what Mr Stanhope says but I am advised that if it is silent the liability naturally attaches to the territory. I want to make that point. Subclause (7) specifically refers to subclause (6), and if the bill is silent on that any liability obviously attaches itself to the territory.

MR STANHOPE (Leader of the Opposition) (4.50): I will accept it, on the Attorney's judgment.

Subclauses 9 (6) and 9 (7) negatived.

Clause 9, as amended, agreed to.

Clause 10.

MR STEFANIAK (Minister for Education and Attorney-General) (4.51): The government proposes to omit this clause. Late last night I read very detailed advice on this very point in a submission from the Law Society, and I thought that advice had considerable merit. Clause 10 creates the offence of possessing an offensive weapon. The Law Society felt that the clause certainly is not necessary. We have looked into that and we agree that the clause is not necessary as there are existing offences under the Crimes Act 1900 that achieve the same result. So, bowing to the Law Society's request, which we feel was a reasonable one—I think it might have also been raised by scrutiny of bills committee—we propose to omit the clause.

MR STANHOPE (Leader of the Opposition) (4.52): Mr Temporary Deputy Speaker, I will withdraw my amendment.

Clause 10 negatived.

Clause 11.

MR STEFANIAK (Minister for Education and Attorney-General) (4.53): Mr Temporary Deputy Speaker, I seek leave to move my amendments Nos 6 and 7 together.

Leave granted.

MR STEFANIAK: I move my amendments Nos 6 and 7 *[see schedule 1, part 1, at page 1971]*. Amendment No 6 removes a reference to clause 10. Amendment No 7 seeks to remove subclause (2), which also contains a reference to clause 10.

Amendments agreed to.

Clause 11, as amended, agreed to.

Clause 12 agreed to.

Clause 13.

MR STANHOPE (Leader of the Opposition) (4.54): Mr Temporary Deputy Speaker, I move amendment No 5 circulated in my name *[see schedule 2, part 1, at page 1973]*. This amendment proposes to delete subclauses (2) and (3) and replace them with a new subclause (2). The purpose of this amendment is to limit to some degree what I regard as the extent of the power to eject people from the court. Clause 13 (1) provides:

> If a security officer believes on reasonable grounds that the person entering or on court premises is behaving unlawfully or in any disorderly or menacing way, the officer may require the person not to enter, or to leave, the court premises.

Subclause (2) provides:

> However, if the person tells the security officer that the person is required to attend the court, the officer may only make the requirement with the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.

Subclause (3) provides or explains that a person is required to attend the court if the person is a lawyer, is a party to the proceedings, or is required to attend by summons, subpoena et cetera. I propose to replace subclause (2) in particular with a subclause which provides:

> However, the security officer may make the requirement only with the leave of relevant court or if the person continues to behave unlawfully, or in a disorderly or menacing way, after being warned by the officer.

I am concerned about the basis on which a security officer might decide, for instance, that a lawyer should not attend at court. I cannot imagine a circumstance in which a security officer should be able to exercise his personal discretion as to whether or not a lawyer, for instance, should be required to leave the court.

The bill as presented by the government provides that it is up to the security officer to decide, for instance in this circumstance, that a lawyer is not required to attend the court. All I am suggesting is that that sort of discretion should be exercised by the court, not by the security officer. That is the purpose of my amendment.

MS TUCKER (4.57): We will be supporting this amendment. Clause 13 defines who is required to attend the court and requires permission from the court for a security officer to order such a person out of the premises. Labor's alternative adds the requirement that exclusion must be with the leave of the relevant court—it must be assumed that there is a relevant court—depending on why the person is there, and only after being warned by the officer.

I believe that a combination of Labor's amendment and the original clause would result in a better clause. Labor have removed the definition of who is required to attend a court, leaving it to the authority of the relevant court. It is not clear which of the court's staff will be able to authorise the making of that decision. Is it the magistrate, the clerk or administrative staff of the court system?

We will support Labor's amendment in preference to the existing two subclauses, because at least it gives a person a chance to be warned when they are in danger of being ordered to leave. This is preferable, not because that is acceptable behaviour but rather because it is understandable that someone under the strain of a court appearance may act in difficult ways. A lot of the effect of this clause in settling a menacing or disorderly person will depend on the skills of the security officer. I can only rely on a report on victims of crime and I express the wish that officers continue to rely on their negotiating skills.

MR STEFANIAK (Minister for Education and Attorney-General) (4.59): Mr Temporary Deputy Speaker, I understand the officers certainly do have very good negotiating skills and use them, and I think that is very appropriate. The government feels that the clause should stay as it is. We would oppose Mr Stanhope's amendment No 5. We feel that this amendment would water down the powers of officers to remove from the court people who are behaving unlawfully or disruptively.

Indeed, if you have a look at subclauses (2) and (3), you will see that if a person is behaving unlawfully or in a disorderly or menacingly way and that person tells a security officer that they are required to attend court, certain other things have to flow from that. The officer may then only make the requirement with the court's leave. The officer has to be satisfied on reasonable grounds that the person is not required to attend the court.

The clause defines a person who has to attend the court. I think Ms Tucker is right in saying that that is a very sensible provision to have. That basically means that if the person who is to appear before the court is a lawyer, that is too bad for the security officer because the lawyer is a person who is required to attend court. In that instance, the only person who can tell them to leave is the court. Subclause (2) contains all the protections that are needed. Also, subclause (3) has the added benefit of defining who is a person required to attend court. So, if anything, I think there are probably more safeguards.

The clause, as drafted, is certainly clearer than it would be if it were amended by Mr Stanhope's amendment. In fact, I think the clause, as amended by Mr Stanhope, might even be subject to more abuse. In one way the amendment waters down this provision but in another way it is not as clear. Quite clearly, the clause enables

a security officer to be overruled by the court. There are certain people in court who have every right to be in court.

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

MR STANHOPE (Leader of the Opposition) (5.01): Mr Temporary Deputy Speaker, I wonder whether Mr Rugendyke and Mr Kaine could indicate how they intend to vote.

MR RUGENDYKE (5.02): I want to let Mr Stanhope know that I will not be supporting this amendment.

Ms Tucker: Why?

MR RUGENDYKE: Based on my belief that what is there is appropriate.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

Clause 13 agreed to.

Clause 14.

MR RUGENDYKE (5.06): Mr Temporary Deputy Speaker, I withdraw amendment No 5 circulated in my name.

MR TEMPORARY DEPUTY SPEAKER: Thank you, Mr Rugendyke

MR STANHOPE (Leader of the Opposition) (5.07): I move amendment No 6 *[see schedule 2, part 1, at page 1973]*. Mr Temporary Deputy Speaker, this is a consequential amendment to amendment No 3, which I moved earlier and which was passed by the Assembly. It is a consequential machinery amendment which is necessary as the result of the passage of my amendment No 3.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (5.08): Mr Temporary Deputy Speaker, I move amendment No 7 circulated in my name *[see schedule 2, part 1, at page 1973]*. This amendment simply adds another class of persons to the class of persons that fall within the description of persons required to attend court, and who cannot as a result of that be excluded from the court by a security officer.

Clause 14 (1), as it currently stands, states:

> If a person contravenes a requirement of a security officer under section 8 (Person may be required to state name and address etc), 9 (Searches) or 12 (Security officer may require thing that may hide firearms etc to be left), a security officer may require the person—
>
> (a) not to enter the court premises or a part of the court premises; or
>
> (b) to immediately leave the court premises or a part of the court premises.

Clause 14 (2) states:

> However, if a person tells the security officer that the person is required to attend the court, the officer may only make the requirement at the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.

We just had a debate about that. Clause 14 (3) states:

> For this section, a person is required to attend a court if—
>
> (a) the person is a lawyer who is to appear before the court; or
>
> (b) the person is a party to a proceeding being heard, or about to be heard, by the court; or
>
> (c) the person is required to attend the court by a summons, subpoena or other court process or order.

I am proposing that we add to the class of persons that fit the description of those required to attend the court, the person "accompanying a person mentioned in paragraphs (a) to (c)".

It seems to us that if a lawyer and an associate attend the court for the purposes of representing someone, it is only appropriate and sensible that the associate fall within the description of a person who is required to attend the court.

More often than not, for reasons that I have never been entirely sure of or comfortable about, barristers, for instance, almost always attend with a junior. An instructing solicitor may attend with a clerk who is not a lawyer. A barrister or a lawyer may attend with an clerk or an articled clerk who has been very involved in the preparation of a case or a defence. That person does not fall within any of the three descriptions, yet their presence in the court is vital to the defence of somebody perhaps charged and

required to appear before the court. There is no logic for excluding a lawyers clerk from this section of the bill as that person may have had equal responsibility with the lawyer in the preparation of a case.

This is quite a simple amendment. It simply allows a person who is accompanying one of the described classes to also fall within the description.

MR STEFANIAK (Minister for Education and Attorney-General) (5.11): Instructing solicitors or junior counsel are lawyers. Mr Stanhope probably has not anticipated the flip side of what he is saying. Maybe you could say that a clerk could be required to attend a court. A clerk, even if they were not a lawyer, certainly would not be refused entry to the court. But that does not mean they are a person required to attend court. Obviously, the person's lawyer is and if there were several other lawyers, they would be. Whether a clerk should be included in that is, I suppose, probably neither here nor there. In practical terms it would not matter.

There are some problems, though, because the effect of Labor's amendment would water down the power in clause 14 to remove people from court for contravening a request to undergo a search or leave a bag with an officer because it extends the category of persons with a limited exemption in clause 14. Currently, persons whose attendance is required at court are parties to the court proceedings and the legal representatives of such people.

This Labor amendment would extend the limited exemption to anyone accompanying one of those persons. I think that could very substantially compromise court security. For example, if a Rebels motorcycle gang member was a defendant in a case—that person would be a party before the proceedings in accordance with subclause (3) (b), and that is fair enough—he could come to court accompanied by other gang members who would be able to benefit from the limited exemption in clause 14. I think that would be an inappropriate outcome. So I think there would be real dangers if the Assembly adopted Labor's amendment.

The wording of the clause is fine and it certainly covers the relevant people. There could be real problems, though, if the Labor amendment, as it stands, were agreed to. Indeed, there could be some potentially dangerous situations because quite clearly the subclause as amended would include anyone accompanying a party to the proceedings—in other words, the defendant. The example that I gave of motorcycle gang members would very clearly be a case in point and I am sure that members would not want to see something like that happen or that type of person being able to claim that they are a person required to attend court.

MR STANHOPE (Leader of the Opposition) (5.14): I must say that, in giving an example, I was thinking or attempting to think quickly on my feet. I am concerned about the circumstances that could arise. Perhaps I should have thought before about the examples that I could give. There was much hoopla about the re-announcement of the appointment of a witness assistant. I had thought for a couple of years that we had a witness assistant. I was a bit surprised to see we had just signed the agreement.

It seems to me that the definition in the bill does not allow the witness assistant to attend in court automatically, as a right and as a person. The witness assistant does not fall within any of your descriptions. A worker from the Rape Crisis Centre does not fall within any descriptions.

Mr Stefaniak: They would be a party to the proceedings, a witness.

MR STANHOPE: No. A woman who had been raped and was appearing in court could decide for the purposes of the appearance that she wanted some support from a worker from the Rape Crisis Centre. She might want the support of the witness assistant. It seems to me that they are two examples—I am just trying to think quickly on my feet—of people who could be excluded from your definition of a person required to attend a court. They are people who do not have the protection of this section. A security officer does not have to satisfy the more onerous reasons for excluding such people from court.

It seems to me that there are a group or class of people—we should sit down and talk about this; perhaps we should have done so—who are not required to attend court. But the witness assistant certainly has quite specific duties and responsibilities.

Mr Stefaniak: And there is nothing to stop them going.

MR STANHOPE: They do not attract the protections that this section is designed to—

Mr Stefaniak: No, but you just said they were not required to attend court. These are people who are required.

MR STANHOPE: That is the point. We are deeming a class of people as people who are required to attend court. It seems to me that there is probably a range of other people who fall within my amendment—that is, a person who is accompanying a person mentioned in paragraphs (a) to (c). If a rape victim is required to attend a rape trial, it seems to me that the people accompanying that person—it could be a member of the Rape Crisis Centre or the witness assistant—should have the same protections.

MS TUCKER (5.17): I will support the amendment moved by Labor. Mr Stefaniak has not addressed the main issues. The Bar Association also raised this matter, and I do not know if this is where Mr Stanhope got his amendment. They were concerned about this very issue. There may well be people who need to be in the court but who would not attract the protection under your criteria for people who are required to attend court. That could well be a personal support person or whatever. I am prepared to take the advice of the Bar Association. They have a strong view on this. I think this is a reasonable addition to the clause and I do not think it is legitimate to say, as Mr Stefaniak did, that it is a dangerous thing.

MR STEFANIAK (Minister for Education and Attorney-General) (5.18): Mr Temporary Deputy Speaker, I think people are missing the point here. Even if someone is a person who is required to attend court, the court can still direct them to leave if they are misbehaving. As someone who has appeared in our courts on a daily

basis—certainly on a daily basis when I was a prosecutor—over a 15-year period, I know that there are not too many occasions on which people are required to leave.

All of the people that you mention come to court. There is absolutely no drama with this, and no-one would anticipate that a person of the sort that was mentioned would put themselves into a position where a court, under what is now clause 13, would require them to leave. Further, I am advised by my departmental officers that the list is not exclusive.

I direct members' attention to subclause 3 (c), which states:

> the person is required to attend the court by a summons, a subpoena or other court process or order.

There is not drama with this. There is absolutely no problem with the court itself ordering that such a person needs to attend court. Indeed, Ms Tucker, courts will often direct or order a party to bring someone to court. They will direct someone from an agency like the Rape Crisis Centre or the Drug Referral and Information Centre to come to court to assist. In that instance they would fall within this.

I think the dangers of adopting Mr Stanhope's amendment far exceed any potential difficulties. I think there is already provision to have included in the definition people such as those he is concerned about. Again, I remind Mr Stanhope of my little note from the department saying, "The list is not exclusive."

I think there are some big potential problems in the way he has drafted his subclause. Perhaps he could come back with something that does that better and which allays the fears we have of, as I said, members of the Rebels motorcycle gang accompanying a defendant, as specified in paragraph (b). You could have some huge problems if that were the case. This would present very real dangers.

Mr Stanhope's amendment, as it stands, should not be acceded to. If he can think of something better later on, we could always revisit it. But, firstly, I do not think this is a practical problem; and, secondly, I think there would be some very real dangers if we allowed this amendment to get up in this form.

MS TUCKER: (5.20) I would like to respond to what Mr Stefaniak has just said. Clause 14 (2) states:

> However, if the person tells the security officer that the person is required to attend the court, the officer may only make the requirement with the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.

Subclause (3) states:

> For this section, a person is required to attend the court if—
>
> (a) the person is a lawyer who is to appear before the court; or

(b) the person is a party to a proceeding being heard, or about to be heard, by the court; or

(c) the person is required to attend the court by summons, subpoena or other court process or order.

You have just said that this is not an exclusive list. I can remember having a discussion—I cannot remember which legislation it was; it might have been abortion legislation—where it was explained to me that in fact lists are exclusive unless it is said that they are not. You seem to be suggesting that there is some flexibility and freedom here to add other people. I do not see that when I read the clause.

You are saying that you might get a gang of bikies in the courts. All the clause is saying is that particular people attract a particular protection, which means that the court has to give leave in respect of that person. It is not saying a person cannot be expelled—it is not saying that at all. As I understand it, you have set up in this legislation a special list of people who attract a particular protection. Because there are concerns that this list is too exclusive, what Mr Stanhope is doing is adding more flexibility to basically what you have presented.

As I said, this concern has been expressed by people in the legal fraternity who work in the field. I think it seems perfectly reasonable. Of course, it is always possible to have people removed from the court. We would obviously remove a gang of bikies.

MR OSBORNE (5.22): Mr Temporary Deputy Speaker, I think the clause could have been drafted a bit better. But having said that, I think the arguments put up by Mr Stanhope and Ms Tucker have merit, and I am prepared to support Mr Stanhope's amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (5.23): Well, Mr Stanhope, you had better put up an amendment to clause 13 as well because otherwise certain other people will be able to behave unlawfully or in a disorderly way et cetera. If you have the numbers to amend clause 14, you had better go back and do the same thing to clause 13 (3).

Question put:

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

The Assembly voted—

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

Question so resolved in the affirmative.

Amendment agreed to.

Clause 14, as amended, agreed to.

Clauses 15 and 16, by leave, taken together.

MS TUCKER (5.27): I have some concerns about these clauses. Clause 15 makes it an offence to, without reasonable excuse, hinder or obstruct a security officer while they are exercising their functions. The clause also specifies a maximum penalty of 50 penalty units, imprisonment for six months or both.

The questions that arise for me are: what will a security officer judge to be hindering or obstruction? Will it be someone asking to see their identification? Will it be someone exclaiming that they need to get into court? We hope that "reasonable excuse" will cover these eventualities.

Clause 16 allows a judge or magistrate to close court premises or to order particular people to leave in the interests of securing order and safety in court premises. The clause makes it an offence to contravene such an order and empowers security officers to use reasonable force to enforce these orders.

Again, this is transferring powers to security officers. Surely, if the court was closed for public safety reasons, police officers could be called in to enforce the closure, that being an unusual event. That would ensure that the police power— training and scrutiny govern their discretion to use reasonable force—was not transferred to a security officer, who does not have the same controls placed upon their actions.

This is an area where the court staff are not sure of their powers, including the situation when a magistrate decides the court should become a closed session. Court attendants are currently left with the job of enforcing these orders. As an alternative, someone refusing to leave the court could be told, "Well, I'm adjourning this session until the police come to remove you." This would add some time to the interruption to court proceedings. An alternative legal approach is the trespass provision. Under this law, the most senior person in a place has power to order a person to leave and, if they do not leave, the court officer can call the police.

This is one of the more difficult aspects of this legislation that I am very uncomfortable with. As I said at the beginning, we have ended up with a bit of a mishmash. We do understand that there are safety concerns for the courts but there are also dangers generally to society from this kind of sloppy approach to creating laws. So I just want it on the record that I am not happy with this.

Clauses 15 and 16 agreed to.

Clause 17.

MR STANHOPE (Leader of the Opposition) (5.31): Mr Speaker, my proposed amendment No 8 to clause 17 is consequential on my amendment No 2 being passed. However, as I lost that vote I will withdraw my amendment. Amendment No 9 is similar to my amendment No 8, so I withdraw that as well.

MR SPEAKER: Yes, I understand. So you cannot move No 10.

MR STEFANIAK (Minister for Education and Attorney-General) (5.31): Mr Speaker, I formally move amendment No 8 circulated in my name *[see schedule 1, part 1, at page 1971]*. This amendment to clause 17 ensures that a person's appointment as a security officer may be terminated if he or she is no longer competent to act as such. It reflects a suggestion made by the scrutiny of bills committee.

MR STANHOPE (Leader of the Opposition) (5.32): This amendment relates to the sacking of a security officer. I just want to note that I just think this is a very interesting approach that I have not seen before. Subclause (3) sets out the grounds on which the chief executive may, in writing, revoke the appointment of a person as a security officer. It is interesting to note for the record that the amendment inserts after paragraph (c) of subclause (3) the following new paragraph (ca):

> the person is not capable of competently exercising the functions of a security officer under this Act; or

I have to say that I am not entirely sure what it means but I think it is a rather novel approach to determining whether or not somebody should be sacked.

Amendment agreed to.

Clause 17, as amended, agreed to.

Clause 18 agreed to.

Clause 19.

MR SPEAKER: Mr Stanhope, I think you have an amendment to clause 19.

MR STANHOPE (Leader of the Opposition) (5.33): Mr Speaker, this amendment is consequential and therefore I will not be moving it.

Clause 19 agreed to.

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

MR RUGENDYKE (5.34): Mr Speaker, I move my amendment No 6 *[see schedule 3 at page 1980]*. This amendment removes the definition of "frisk search".

Amendment agreed to.

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

Ordered that clause 13 be reconsidered.

Clause 13—reconsideration.

MR STANHOPE: (Leader of the Opposition) (5.35): Mr Speaker, I move my amendment to clause 13 *[see schedule 2, part 3, at page 1979]*. I think members will be aware that just a short while ago an amendment I moved to clause 14 was agreed to by the Assembly. That amendment provided for an additional class of persons to fall within the definition of a person required to attend the court. Clause 13 is worded in the same terms but it has a slightly different effect or purpose.

For the sake of consistency, it would be only appropriate and reasonable that the amendment that was carried by members in relation to clause 14 apply also to clause 13—that is, that the class of persons that fall within the definition of a person required to attend the court includes a person accompanying a person mentioned in paragraphs (a) to (c).

Amendment agreed to.

Clause 13, as amended, agreed to.

MR SPEAKER: The question now is that the bill, as amended, be agreed to.

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

Electoral Amendment Bill 2001
Detail Stage

Debate resumed from 13 June 2001.

MR SPEAKER: I advise members that this bill has been debated concurrently with the Electoral Amendment Bill 2001 (No 2) and the Electoral (Entrenched Provisions) Amendment Bill 2001, and we may continue so to do.

Clauses 1 to 3, by leave, taken together and agreed to.

Clause 4.

MR STEFANIAK (Minister for Education and Attorney-General) (5.38): I move amendment No 1 circulated in my name *[see schedule 4, part 1, at page 1981]*.

Mr Moore: It is a consequential amendment.

MR STEFANIAK: Yes, it is a consequential amendment.

MR MOORE (Minister for Health, Housing and Community Services) (5.39): Although there will be many of these amendments that I will be opposing rather vigorously, they are largely consequential amendments and I have no comment on them. They are quite acceptable as far as I am concerned.

MS TUCKER (5.39): I am happy to comment at this point, if Mr Stefaniak wants some time. My understanding of these consequential amendments is that they relate to the relaxing of funding disclosure requirements. I can certainly speak to that; that is

what happens in clause 29, which they are consequential to. That is what Mr Stefaniak's consequential amendments are about at this point.

Obviously, the Greens are not at all happy with what these amendments are intended to achieve. These amendments contain the government's proposal to reverse the funding disclosure provisions in the bill and the act and make them consistent with the Commonwealth Electoral Act.

At present, if a person or organisation donates more than a total of $1,500 in a financial year to a party or Independent MLA, then the party or MLA must include in its annual return to the Electoral Commissioner the name and address of the person or organisation. However, in calculating this sum, any amount donated that is less than $500 need not be counted. This creates a loophole in that a person could give multiple donations—

Mr Moore: These are not related to that at all.

MS TUCKER: Well, that is what my advice is.

Mr Moore: It is about: schedule 2 amends the Referendum (Machinery Provisions) Act.

MS TUCKER: Are we talking about clause 4?

Mr Moore: These amendments are to clause 4 of the bill.

MS TUCKER: I understood that was to do with the relaxing of funding disclosure. What is it consequential to? I thought it was consequential to—

Mr Moore: To the additional amendments.

MS TUCKER: the clause 29 amendments.

Mr Moore: We have to discuss what we are going to discuss, anyway. At some stage we are going to discuss what we are doing.

MS TUCKER: At some stage we have got to discuss it; that is right. Okay. So this creates a loophole in that a person could give multiple donations of anything less than $500, and those would not have to be identified in the party's return. In the government's original bill, this loophole is significantly closed. It is stated that, in working out whether a donation totals more than $1,500, an amount less than $100 received at a fundraising event need not be counted. I understand that this was the situation before 1996 and that it was also proposed in a private member's bill tabled by Mr Moore in 1999.

We were very happy to support this amendment. The corporate funding of political parties is a major challenge to maintaining our democratic system. It is quite clear to us that companies use their donations to parties as a way of gaining influence in the setting of policies. In addition, the two established parties, who are the major

recipients of this funding, are able to afford political campaigns that are far in excess of what can be mounted by small parties and Independents.

This situation significantly distorts the political power of corporations relative to ordinary individuals. The Greens would prefer corporate donations to be significantly restricted or to be put into a common fund for distribution to all parties on a proportional basis, so that the link between the corporation and the party it seeks to influence can be broken. Regardless of whether such a scheme could be implemented—I cannot see the major parties wanting to limit the donations they receive—there needs to be a very strong system for disclosing the identity of the major donors to political parties, so that it is open to anyone to see who is attempting to influence whom.

I am appalled that the two major parties have now done a deal to reverse the good proposals in the government's own bill so that current loopholes in the disclosure laws will be made even bigger. It is quite obvious that the Labor and Liberal parties are happy to work together when it involves protecting their own interests against small parties and Independents.

It is behaviour like this that makes the presence of the Greens and minor parties in the Assembly and in the federal parliament so important. The Greens have never sought donations from big companies, and we apply ethical standards to any donations we are offered. This makes it difficult for us to compete with the political campaigns of major parties because we obviously cannot afford them. We think it is more important that we base our policies and actions on our core principles and not according to who gives us the biggest donations.

It is not enough to say that we should maintain consistency with the reporting provisions in the Commonwealth Electoral Act. The government was prepared to break the nexus with the Commonwealth act in the original bill, but now they have done a complete backflip. It is also no argument to say that there are currently no examples of people giving a series of small donations to avoid the disclosure provisions. For a start, we have no way of verifying this unless the major parties are prepared to disclose the details of all their donations. Even so, when establishing laws, we have to take into account what situations may arise at any time in the future. It is always necessary to make comprehensive laws, even though we hope that many of their provisions may hardly ever be used. If there are loopholes in a law, they should be closed, not made bigger.

MR RUGENDYKE (5.45): Well said, Ms Tucker. The major parties have done it this time, haven't they? They have really stooped to the lowest of low. They have really lowered the bar. Normally, we talk about raising the bar on accountability, but this time it is way down low. Hang your heads in shame. And hasn't the community summed it up well? Here we are: the editorial in today's *Canberra Times*. How often do we get a good editorial?

Mr Stanhope: Is that the community?

MR RUGENDYKE: "Big parties' ploys not in our interest." Yes. And look at the cartoon—"Tender-ness"—the big grubby developer, I think it is, who has been given a government contract in response to the little brown paper bag with a political donation in it. Who knows how many $1,500 donations come in week after week, as often as they like. They are probably direct debited from the big account into the electoral funding account.

The story on the front page is also very good, under the headline "Major parties do deal on cash". Yes, they have, haven't they? But whose advice ought we take on this occasion? Mr Stanhope will be interested in this. Let's listen to the advice of someone who should know, talking about the Commonwealth legislation that we are aspiring to. The front-page story reads:

> Also this week, the Commonwealth laws which the two major parties in the ACT are seeking to replicate have come under attack.

From whom? Listen to this, Jon:

> Responding to a *Sydney Morning Herald* investigation into party donations, federal Labor Leader Kim Beazley said the Commonwealth laws had 'flaws and faults'.

And we are copying it. He also says:

> A Labor government would close loopholes allowing political parties to take millions of dollars from anonymous donors.

Hear, hear! Congratulations, Mr Kim Beazley. A wise sentiment. A wise sentiment, indeed. Enough said. He has summed it perfectly, hasn't he? The Labor members upstairs will be glued to their TVs, listening to the good news about Mr Kim Beazley. They are too embarrassed, apart from the Leader and Deputy Leader, to come down here into the chamber. But they are listening; they heard it.

Kim Beazley knows, but also an ordinary punter—just one. This lady, a student, copied to us an email message to the Chief Minister. It is important. Let me quote:

> Dear Chief Minister,
>
> In case you mistake me for a very young uni student who could be too easily dismissed from your considerations, I am not. I am an elector, a ratepayer, and a Senior citizen, thoroughly disgusted with the proposed Lib/Lab legislation you intend to put into place to make it ever harder for genuine Independents to get elected into the Assembly. The electorate is not as dumb as you seem to think. Do you people take the "Yes, Prime Minister" series as your bible??
>
> The overall reputation of politicians is at a record low, marginally above the dung heap, and your current actions are not helping. Your excuses beggar belief. To say that the ACT must change its electoral rules merely to fit in with the Commonwealth's is ridiculous—to follow that logic through to its natural conclusion is to say we (and Tasmania) must be compelled to dump the Hare-Clark system, simply because the Commonwealth does not use it.

> Perhaps the big campaign of the next election to "Put the LIB/LABS Last" might be worthwhile, coupled with another campaign to vote for an Independent, ANY Independent, to return democratic government, would be instructive. My vote will go to the candidate who promises to repeal this mischievous legislation of yours.

Doesn't that sum up well the sentiments of the community? And doesn't Mr Beazley know when he is onto a winner when he says that the Commonwealth laws have "flaws and faults". I just wonder why we are replicating this flawed legislation.

Mr Moore: Because we want to—for cash!

MR RUGENDYKE: That is right. This is the importance of the Independents, isn't it? The crossbench who are able to check majority government—as we seem to have here—when it wants to get away with whatever it likes. That is the downfall of majority government in this territory.

Mr Kaine: But you are part of a majority government.

MR RUGENDYKE: Here we have them—plenty of them. We are irrelevant, Mr Kaine. This is majority government here. Isn't it great? Isn't it terrific? We can do what we like; that is the benefit of majority government. I think I have said enough—except that, as for the hurdles the two major parties are putting in front of me, I will live with them. That is fine. I will do it with one arm tied behind my back as well. That suits me fine.

To remind everyone, Mr Kim Beazley is correct in saying that the Commonwealth laws have flaws and faults and that the Labor government would close loopholes that allow political parties to make millions of dollars from anonymous donors. He said it perfectly.

MR OSBORNE (5.52): I have been here for 6½ years now, and I do not think that I have witnessed a grubbier, smellier, sneakier thing than what we have seen perpetuated by the two major parties. I was stunned when I heard about it. My assessment of the relationship between the two major parties at the moment is that it is worse than it has ever been in my six years here. There seems to be genuine hatred flowing across the chamber, and then you hear that there have been these secret negotiations going on between the two major parties.

The disappointing thing is that the Labor Party waged a relentless campaign against the former Chief Minister over secret deals, Bruce Stadium, secret contracts and with attacks on her. But in this deal with the Liberal Party they have created an even worse situation where people can donate money—I do not care what anyone says, if people donate money to you, it is going to have an influence. It cannot not.

If it was a one-off donation of $1,500, perhaps the bitter taste in my mouth would not be quite so bad. But the reality is that a group, the Labor Club, for example—Mr Quinlan raised their name—could make 100 donations of $1,499, and the Labor Party would never have to declare it. I think that stinks.

The one thing I have always felt about the two leaders, Mr Humphries and Mr Stanhope—I disagree with both of them at different times—is that they are both reasonably honest, decent blokes. But at some stage both of them are going to have look at themselves in the mirror and ask what their motivation for this is. The reality is that their motivation is to hide things.

I am really disappointed. I had felt, given what has happened over the last few years, that this Assembly was moving towards more openness. We all rushed to get legislation onto the table about government contracts, freedom of information and all those types of things. I thought we had all learnt from the mistakes of the past, and I was quite excited that we were unanimously moving towards a point in time in this Assembly where there would be no more secret deals and everything would be out in the open. But when push comes to shove, on these types of issues the two major parties always work together to cover their backsides. It has been a grubby attempt at covering up and hiding.

The question I have of the two leaders is: what are you afraid of? Are you afraid to tell the people out there who has donated money to you? What are you trying to hide? I will not talk too much tonight. I just wanted to make the point that, at some stage, maybe at 4 o'clock in the morning, Mr Stanhope or Mr Humphries will wake up, lying in bed with their conscience. They are going to have to answer questions about the motivation for this.

It is a regrettable step that we are taking as an Assembly. It is going to happen. There is going to be a huge loophole. People will be able to make donations of hundreds and thousands of dollars and not have to declare them. No-one will know in the future whether the money given to you has had a bearing on decisions that you have made. It is a terrible disappointment to us. If any of you were to speak to the five non-major party people, that would be the main thing. We are all angry, and we have all said things. But I think we are all genuinely disappointed because there is this huge loophole that someone will try to exploit.

We have been through so much in this place, especially over the last three years with Bruce Stadium and those types of things. I thought the tide was turning and we were moving towards openness, not towards grubby, stinky, little backroom deals like this. It reminds me of a Colombian drug lord laundering money. Who knows what type of money can go in and come out nice and clean at the other end on advertising, ballot papers or whatever.

It is disappointing for the people who have been in this place for a lot of years. Mr Kaine and Mr Moore have been here from the start and have lived through the ridicule this Assembly has copped. There has been a general move towards acceptance because we have had to prove ourselves as an Assembly. But this type of thing really is a huge backward step. At the end of the day, I really believe that the people of the ACT will see it for what it is. The two major parties may think they have pulled off this enormous coup, but the people of the ACT will see it for what it is. It is an attempt to hide, an attempt to cover up, an attempt not to be honest. I am disappointed in the two party leaders that they have allowed this to happen.

MR MOORE: (Minister for Health, Housing and Community Services) (5.58): I want to explain something, Mr Speaker, and I will be very brief. There are two minutes to go. These are actually consequential amendments. The amendments that I will be moving later to close the loophole—that the original bill closed and Mr Stefaniak's amendments will reopen—will close it again. If that is the case and if we are successful—that is, if we actually do reach these people's consciences—we will need to come back to this in the way it was done in the previous bill. The reason I say we want to reach these people's consciences—I think there may be a misunderstanding here—is not about extending the limit of the donation from $500 to $1,500. I happen to disagree with that. I think it ought to be $500, but with $1,500 I can see that a party is not selling its soul. When you are talking about a series of $1,499 donations—

Mr Quinlan: Or $499 donations.

MR MOORE: Or $499—made over 350 days, you are talking about over half a million dollars and in no way declaring who made it. That is what is wrong here; that is the fundamental; that is the loophole we are talking about closing. Mr Stanhope said on the radio the other morning—I was sitting next to him—"The Labor Party doesn't do that. We don't have any of those." I have to ask Mr Stanhope why he supports the Liberal Party in allowing them to do it.

Let me appeal, through you, Mr Speaker, to Jon and to Ted and to other members of the Labor Party not to be part of this fundamental change that opens the loophole. You will have the opportunity later because this is the consequential. What we need to do is close that loophole—you will have dinnertime to think about it.

I appeal to members of the Liberal Party to remember that this is a deal done between your party machines. Now it is time for you to stand above that and say, "No, of course, we don't want a situation where an influence of half a million dollars can be had on a party in any given year without it needing to be declared." That is just in a year. Of course, you can multiply that by the three years of the electoral period if you want, so you are talking about $1½ million. Mr Speaker, it would be very interesting to come back to this after dinner.

MR SPEAKER: Yes. Thank you.

Sitting suspended from 6.00 to 7.30 pm.

MR QUINLAN (7.31): I have to confess that I have not taken a detailed interest in this legislation and had not intended to participate in the debate. But immediately before the dinner recess we heard three speeches dripping with self-righteousness. Three members uttered words like "grubby", "low" and "the bar is at a minimum".

Mr Rugendyke: I praised your leader.

MR QUINLAN: We are talking about two guys in that corner who came into this place under the banner of a party and who immediately, for personal advantage, separated and declared themselves Independent.

Mr Stanhope: Why did they do that? Did they get more staffing allowance? Snouts straight into the trough, was it?

MR QUINLAN: No. These are the innocents in this place, the defenders of public propriety. As far as I could see, we were arguing about whether somebody who wanted to give me $3,000 had to write six cheques or two. That was about the sum total of the effect of what we were talking about. But somehow it had to bubble into a major issue. Why does it have to bubble into a major issue? It has to bubble into a major issue because you guys need to hang on to that bit of the changes in the legislation, because a lot of it does point to you.

Here is another coincidence I would like the Assembly to note. Most of us are allocated our salary and our staff allowance and a motor car according to our position. There are three people in this place who have above-cost motor cars, who are subsidised. They do not have a car according to the needs of their job; they have a car according to their personal needs. They are the self-righteous ones. There are three over-the-odds motor cars. Guess who has them? The three folks who were on their feet immediately before the dinner recess dripping with self-righteousness. We are not even talking about protecting someone else. Each of them has at some time been an Independent and at some time been a member of a party, according to convenience.

Mr Speaker, I wanted to make that observation, having sat through what I thought were three speeches that were quite out of place, given the individuals who delivered them.

MR BERRY (7.36): I am always happy to try to help set the record straight, and I am pleased to support my colleague Mr Quinlan in his expose on the levels of hypocrisy that hitherto have been paralleled only amongst demagogues in other countries around the world. The hypocrisy in this place is beyond parallel. How dare these so-called Independents get on their hind legs and criticise the Labor Party and the Liberal Party for the way they have operated in this country—the Labor Party for over 100 years, and always in the interests of collectivism; and the Liberal Party since the 1940s, with their particular philosophy and a commitment to their particular constituency.

All of a sudden three Independents appeared on the scene. Mr Moore, the planning guru, arrived on the scene in the nimby party, the residents rabble. They line up in this place and present themselves as the statues of commitment and philosophy that everybody else should measure themselves by.

It was not long before some of them felt that they would be more comfortable with the Liberals, and off they went. Mr Moore was indignant. He said, "What an outrageous thing to do! You came into this place as a member of the Residents Rally and you throw in with the Liberals. You rats!" He was outraged. He was purple, livid. Of course it was not long before Mr Moore thought, "There is a bit in this. I have been watching this. There is something here. Balance of power is very important if you use it properly."

I was a member of a Labor government, and I strongly recall the Moore Independents. What an odd name—a political party called the Moore Independents. It was hypocritical by its name alone. Pretty soon after the Moore Independents had found

their way into this Assembly, they worked out that they needed more staff, and the way to get that was to pressure the Labor government for it. The Labor government at the time was told, "If you want to get your legislation program through, we need more staff to read it. I can see that you have a busy legislation program, as Labor Party governments do."

Mr Moore and the Moore Independents—by now Independents—wanted more staff to read all this legislation. Pragmatics being what it is, because of the necessity to get Labor legislation initiatives through and for the good governance of the territory, we folded. That was a mistake of the past. We should have stood our ground and told Mr Moore to nick off. The same should have been done for all the other Independents who have used their balance of power to get more goodies.

That was the start of the rot. Once they got an increased staffing allowance, it then became de rigeur. When the Moore Independents ran at the next election, there were banners out everywhere. Of course, only the leader of a party got an allowance and you got a bigger allowance if you left the party and became an Independent. It did not take Einstein long to work that one out, and pretty soon people were Independents again.

Then we moved on; governments came and went. Who was the famous footballer who got sent off the field? It was John Lomax. John Lomax mistakenly belted somebody at a Raiders game and got sent off. He got a period off the paddock for that. Ossie over here got a slot in the game. He threw a couple of passes in a great game. He was a great footballer who did a great job. He found his way into the Assembly as a footballer and a good bloke. He had no real agenda. That is a fair enough view of the fellow. Later he was joined by his mate over here, Mr Rugendyke—a good bloke, a community cop, who was able to massage the people.

I bet they thought, "If we throw in with the Greens and Mr Moore we will have to share the balance of power with those buggers. We would be better off holding on to it ourselves." They were right, because the two of them now essentially control the government. Mr Moore saw a few opportunities. He could see the two from the Osborne group lining up. They were now Independents, by the way. He thought, "I had better get amongst the action here" and he and Kate Carnell found a few common things, save for about 40 that were put on a long list. Then of course the goodies started to flow. My colleague Mr Quinlan mentioned them.

But it gets worse. All of them at election time say, "We can pretend to be a party, like the rest of them, for the purposes of an election. But none of them other bloody Independents can, because they are out there and we are in here." This is the old Indian train syndrome. You fight like billyo to get on the train, and when you are on it you fight like billyo to stop others from getting on it. That is what this is about. You set yourselves up in a nice little niche and then you try to create the circumstances to prevent other Independents from challenging you. When you get in here, you are very quick to say what a great thing it is to be an Independent, how you represent an Independent view and are not part of those political parties that are being manipulated by hidden faces. Of course, they are not keen to say that political parties are a filtering agent for members who find their way into politics and that if they were subjected to that filtering agent perhaps they would not make it. That is the real story.

Mr Speaker, you may have sensed just a tinge of anger in my comments about Independents and the little lecture and psalm we had preached to us a little while ago. I am not one to play on things like motor cars and little benefits members have, because in the end, nobody gets to win out of that. Everybody gets criticised because they are using a motor car and a lot of punters out there do not have them. It is as simple as that.

Every time these people get up and pontificate about how good they are, I am going to tell the world what they are really like. They want a big car for themselves, a flash one, for the funniest of reasons, none of which have anything to do with the work they do in here or outside. *(Extension of time granted.)*

I think most members in this place have a reason for a car. They have work to do out in the electorate and they have a lot of miles to cover. If I have particular needs that might strike my fancy, I might need a larger one, one that makes me look bigger or one that perhaps makes me stand taller amongst my peers. I may need one for some other personal reason. I do not think that enters into the picture, nor should it. But that is what has happened here.

This place of power and influence has corrupted them. That is the sort of corruption that has come into this place. This place has been corrupted by the power and influence of the balance of power. Balance of power is an extremely powerful instrument. You have discredited it in this place. All of us are a bit reluctant to lecture you on these things, because we depend on your vote from time to time. We know that we get paid back when we stand up and speak our minds. But there are some times when you just cannot hold back, and this is one of them.

It is about time that the message got through loud and clear about the hypocrisy of those who come into this place and lecture members of this place for having a connection with a political party. I would like to see a couple of you try your luck in one of the political parties. Do the hard yards. Just try your luck. That is what I say to you. When you are gone, it will be like pulling your fist out of a bucket of water. You will not have left a mark. There will not be a ripple. People will say, “Who was that?”

But when you are gone, the political parties will still be here, like it or love it. We all protest about the input into the political debate by the other side, as we describe our opponents. But when you are gone, those of us with a long-term view will still be working within the parties for an outcome for the community. Some of us may give it away because it is too hard. It is too hard sometimes, for all of us. But when we give it away, there will still be members of political parties here fighting the good fight for what they believe in. They will not be using their balance of power for personal interest. They know that the political parties they belong to are here for the longer term. I want you to think about that the next time you get up and try to lecture us about how moral and how good you think you are in doing your jobs. How dare you lecture us!

I will finish off with what I started with. The hypocrisy that I heard in the last little burst from you lot has no parallel. It was extraordinary. Do not lecture us. Do not lecture me.

MR STEFANIAK (Minister for Education and Attorney-General) (7.50): This is a very simple procedural amendment, but I am delighted to hear the comments of so many people. A lot of hypocrisy has been flowing around tonight, and I have considerable sympathy for some of the views expressed by my colleagues in the ALP.

People have made a lot of the $1,500 donation. Australia is not like America and a lot of other countries. I am sure both the Labor Party and the Liberal Party would like a lot more political donations. I am sure the Greens and the Independents would, too. But what is being proposed here does not discriminate against anyone. Political parties, political groups or named groups—whatever you call them—are treated equally.

There are very good reasons why little donors, ordinary citizens or people who feel vulnerable do not particularly want their names bandied about. When we were talking about this in the party room earlier this week, Jacqui Burke made a valid point. If you are a Liberal supporter, like the party and want to make a donation of, say, $1,450 but you work with a lot of Labor people, and your boss is a Labor bloke actively involved in the party, you might be pretty worried about having your name bandied about as a Liberal supporter who has made a donation. The same might apply to a Labor person in a Liberal stronghold, an Independent in a Greens stronghold, or whatever. Those things do occur.

You ask any member of this Assembly who has not been re-elected—I am about the only one who has come back—about how you get tainted for having been a politician. I went to get my old job at the DPP back. I did not get a look in. I was interviewed, but that was it. I went for a couple of other legal jobs I was ably qualified for and I did not get a look in. Thank God, I did some work with the Army Reserve, which I was in at the time, and I did some work at Russell Hill for the regular army for about nine months. I then had a crack against Ros Kelly in the GST election. Eventually I worked with my old mate Bernard Collaery.

Mr Stanhope: From the Residents Rally?

MR STEFANIAK: From the Residents Rally, yes. I found that if you are an ex-politician, a Liberal, you are tainted. The same might well apply to Labor. Helen Szuty suffered that fate. A lot of people have had a lot of trouble getting back into the work force after having been tainted by being in this place. That is incredibly unfair. The same principle applies to little people who might want to make a donation to a party. They do not particularly want to be named.

The big boys do not mind. The people who have an obvious affiliation with a political party do not mind being named, and they are named. You have seen that in the *Sydney Morning Herald*. You have seen that in Michael Moore's proposal to tender receipts for political donations made to the Liberal Party and the Labor Party over a number of years.

A number of companies and groups will probably make donations to both parties. They do not mind that. That is part of the political process. Unions, obviously, will feature prominently. They make donations to the Labor Party. A number of businesses

will make donations to us. They do not mind if that fact is published. But some smaller people—and there are not many—might treasure anonymity. What on earth is wrong with that? It does not necessarily benefit the Labor Party, the Liberal Party, the Greens, the Independents or anyone else. It pans out. It is fair across the board.

It is a slur on members in this place to say that we are influenced by donations to political parties. I would disagree with about 95 per cent of what Mr Berry believes in and sprouts. But there is no way in the world I would say that he is influenced by money given to his party to support them. He does it out of love. He might be misguided, in my opinion, in a lot of instances, but he does it because he is an old traditional unionist. He is an old left-wing member of the party, and he does it because he has a passionate belief in those values.

I would hope the same applies to me and some of the things I believe in. If certain groups give us money because they believe in our philosophy, that does not mean that we are going to favour them. They do it because they think we are probably the better group. We have a certain philosophy. We lay our cards on the table. We put in policies before each election. We are criticised for our policies. This lot opposite have criticised us to buggery in relation to free school buses, but that is a policy of my party, and we are honouring it, whether you like it or not.

We have a lot of policies, and people can judge us on them, as they can judge the Labor Party and the Greens. I disagree with heaps of stuff Ms Tucker says, too, but she has a right to say it. Her party puts it on the table, and people can judge it and accept it or not. The same with you, Mr Rugendyke. You have some policies, a lot of which I would agree with. We have similar views on law and order and a number of other things.

Mr Quinlan: Hang ‘em, high.

MR STEFANIAK: You bet, mate. People might well think that Dave Rugendyke is a top Independent worth supporting. But he is an honourable man. That does not mean that he is going to do special deals and special favours for them. I do not think there has been too much of that in state and federal politics in Australia.

There have been instances of corruption. You talk about local councils. That is usually people getting some sort of personal benefit. You talk about Mal Colston from the federal parliament, who was involved in travel rorts. That is just greedy individuals or individuals going off at a bad tangent. That is not people, a party or a group misusing the system. The Bjelke-Petersen government and some other governments with brown paper bags were cases of individuals perhaps being corrupt. That had nothing do with people making donations to political parties.

These donations are very open. I will go through some of them. I have picked up Michael Moore’s papers here. Let us look at some of the ones for the old comrades here, Liberal and Labor, in 1997-98. Even the Australian Electoral Commission gave a bit of money. Wayne Berry gave money, as did the CEPU and the CFMEU. There were various MLA donations. Steve Dargavel gave a lot of money. The Canberra Labor Club—one would expect that—Howard Smith Industries, a few more unions, MBA Land and Bob McMullan are a few more taken at random.

Mr Rugendyke: What are the figures, though?

MR STEFANIAK: I am sure Michael Moore will table them. These are all donations of more than $1,500. Our party got something from the Electoral Commission, too. We got more than Labor did, because we got more votes. You beauty! The 250 Club—remember them?—were proud to support the Liberal Party. They gave $20,000. Donations were made by the Free Enterprise Foundation; a real estate firm, IOF Australia Pty Ltd; Jim Murphy—no dramas there; Lou Westende; your good self, Mr Speaker; my good self; and Senator Margaret Reid. The information is all in the table.

If people or groups want to give to a political party, they are going to do it. Quite often the same group will give something to both. You see that time after time. Small individual donor are not going to give $1,499 one day, $1,499 the next day and $1,499 the day after that. I do not think that happens terribly much in Australian politics. If someone can prove me wrong, please do so. That does not seem to occur. Most people do not seem to have a drama. If they want to give a certain amount of money to a party, they do it. But if you are a small donor and a bit wary, this bill gives some type of protection.

Mr Rugendyke: What does "a bit wary" mean?

MR STEFANIAK: People are. Mr Rugendyke, I have been in situations to know that it is very hard for people who have been in this place to get other jobs. I can understand people thinking that if their name appears as having made a small donation to the Labor Party, the Liberal Party, Dave Rugendyke, Paul Osborne, Michael Moore or the Greens, someone might take it out on them. I think that is a pretty sad situation in a democracy. You cannot discount that that happen. I just want to lay that on the table.

We are probably going to hear a fair bit of hypocrisy in this debate. I ask members to have a little bit of a think about the reality of political donations and the political situation in Australia. This is not the United States. Have a little bit of a think about the members around you in this place. Whilst we might regard some people in this place as having some pretty strange ideas, I do not think anyone in this place is so dishonourable as to be bribed by a donation which might not be reported. That is stretching the imagination a lot.

This is available to anyone—not just the major parties but the minor parties, the Independent groupings and the Independents. The Liberal Party is quite comfortable with the Independent groupings. One area where we do differ from Labor and the Greens is in the Independent groupings. That is fair. It has been accepted in the Canberra electoral scene. We have no dramas with continuing that.

I make those points in speaking to this basically procedural amendment. That will save me making them later. I hope that that is the case with other members who have made comments now so that we do not protract this debate.

Amendment agreed to.

Clause 4, as amended, agreed to.

Clauses 5 to 8, by leave, taken together and agreed to.

Clause 9.

MR STANHOPE (Leader of the Opposition) (8.02): This provision is made in anticipation of the possibility that the Commonwealth will change the arrangements for the witnessing of applications by people seeking to enrol on the Commonwealth electoral roll. As the minister would be aware, the practice in the ACT is to use the Commonwealth roll.

The Commonwealth government has introduced and had passed through the House of Representatives regulations which alter quite dramatically the class of person who may witness an application for enrolment. They have narrowed the class of person who may witness an application to enrol on the Commonwealth electoral roll, in a quite blatant attempt to make it harder, to disadvantage certain groups of people in the community and to seek to ensure that people it perceives to be traditional Labor supporters are less likely to enrol.

Those regulations are currently stalled in the Senate because the Labor Party and the Democrats refuse to accept them. So the regulations have not been proceeded with. Members may be aware of the debate in the federal parliament—it was quite fast and furious—about the Liberal government's desire to narrow the class of persons who traditionally have been able to witness forms. It is a position the Labor Party does not accept or embrace.

We would be inclined to wait and see any changes to the enrolment procedures for the Commonwealth electoral roll before we give carte blanche endorsement of the Commonwealth electoral roll, whatever the rules may be. For that reason the Labor Party will oppose this automatic linkage without an opportunity to comment.

MR MOORE (Minister for Health, Housing and Community Services) (8.05): Mr Stanhope's argument is an interesting one. I think it carries some weight. It will raise for Mr Stanhope a great difficulty, because the same argument is going to be put later in respect of something I understand he has already agreed to. We have heard him in the media using the argument that it is aligning with the Commonwealth system.

When we come to a later amendment, I will put exactly the same argument—that we ought not to align with the Commonwealth unless we know what the Commonwealth has done. If I am correct, Mr Stanhope, your argument is that we ought not to align with the Commonwealth. Provided you are consistent later, I am inclined to support you. I can see the weight of your argument. I foreshadow that I will put the same argument with regard to a much more serious matter. I am not denying the seriousness of this matter.

Having looked at the act and the amendment before me, I think there is some weight to the argument that we ought not to narrow the ability for people to enrol. If that is the case, we ought to know what the Commonwealth is doing and not give them carte

blanche. Mr Stanhope, you have put a good argument, and I will be supporting the position you have taken. But I foreshadow that I will be bringing the argument back to visit you.

MR CORBELL (8.07): I rise to support my colleague Mr Stanhope on this point. It is important to elaborate on exactly why this issue is, in principle, a matter of concern for the Labor Party. It is of concern because it restricts the class of people who can witness an application to be put on the electoral roll. In that respect it is a hurdle for people enrolling. In place of the current arrangement, which allows any enrolled voter to witness an enrolment application, this clause will restrict the class of people able to witness such an application.

A witness may be a justice of the peace, a member of parliament or a range of other individuals, but it will be a more restricted range of individuals than currently provided for. Anything that puts a hurdle in front of someone being able to enrol to vote is a matter of concern for us. We should not make enrolling to vote hard. But we are seeking to do that if we allow this clause to take effect, because the Electoral Commission will be able to provide for only a limited range of people to authorise the nomination of someone for the roll.

This particularly affects younger people, perhaps first-time voters. It is hard enough to get first-time voters on to the roll. If we make it more difficult for them to get on to the roll, we are going to see fewer people enrol. That is the in-principle concern the Labor Party has on this matter.

The point Mr Stanhope was seeking to make is that we do not want two rolls. So when Mr Stanhope says that we should wait and see what the Commonwealth does, he says so in the context of saying, "What is going to happen as a result of the outcome of the debate which is currently stalled in the Senate?" If it is the case that the Commonwealth parliament agrees to changes to its enrolment procedures for federal elections, then obviously it is not desirable for the territory to have to maintain a separate roll. It would be silly to have two rolls—an ACT roll and a federal roll. We would prefer to see the one roll, but we would also prefer to see the easiest possible requirements for people to go on to the roll.

Those are the issues at stake with this clause, and they are the reasons why Labor Party is opposing it.

MR STEFANIAK (Minister for Education and Attorney-General) (8.11): This provision ensures that a person who goes on the roll is who they say they are. Voting is a right, a responsibility and a fundamental tenet of living in a democratic society. It is one of the most important things a citizen can do, and we want to make sure that the citizen is in fact who they say they are.

In a number of areas in Australia witnessing a person's signature is restricted to a certain class of persons. It has been expanded considerably over the years. Once a witness had to be a justice of the peace, but statutory declarations and affidavits, for example, can now be signed by all sorts of persons—members of parliament, solicitors, barristers, public servants of more than five years standing, serving military

officers, teachers, post office officials. There are about 20 different categories of people who are able to witness important documents.

We devalue the right to vote by having any old person as a witness. This provision is to ensure that people who go on the roll are who they say they are. I think it is entirely consistent with the class of people who have to witness a lot of other documents in this country. It is part of the checks and balances. I understand that the federal Labor Party does not like it, and that is probably why the mob opposite are opposing it. There are some very good reasons why the clause is there, and I think it should remain.

MS TUCKER: (8.12) I am interested in the debate. I am interested in what Mr Stanhope said. As I understand it, this clause is not going to make a significant difference in reducing potential rorting, but it will make it a little bit more difficult for people, because you are setting up another barrier. On reflection, on hearing the arguments, I support Mr Stanhope on this.

MR HARGREAVES (8.13): The Justice and Community Safety Committee participates in a range of forums with other jurisdictions on a thing called template legislation. Mr Moore is aware of this. In fact, to pay him his due, he has championed the cause against the adoption of template legislation because—I think we agree on this—it tends to take away the sovereignty of the various jurisdictions. If you merely pick up a piece of legislation from another jurisdiction and say, "If they change it, then it affects us," you never know, unless they tell you. Also quite often it contains within it—and nobody knows—subordinate legislation which is not changeable through debate in their particular parliament. So that can affect us as well.

Looking at the raft of changes being proposed this evening, this is the only one I can see that would enable me to rest comfortably with the principle of saying no to template legislation and picking up other people's legislation.

The Commonwealth legislation is so intrinsically linked with our electoral roll that we need to be particularly consistent in the processes on who can and who cannot be on the roll and what witnessing qualifications apply. But I have to support my colleague Mr Corbell and remind members that we do not want any action which goes against compulsory voting in Australia. We know that in America and in the United Kingdom people grab the option not to vote, particularly when they think a particular party is a shoo-in. They do not use their vote to cast their critique of the government.

If we provide hurdles for people to register, particularly first-time voters, we encourage people not to participate in the political process. I do not think that is on. We have heard many things said about members in this chamber tonight. We have heard them in the past and we will hear them again in the future. I am not sure whether it was Mr Moore or Mr Stefaniak who said that we are judged through the media on our performance here. The media are particularly critical, then the constituency pick up these critiques and make their own minds up and cast their judgment at the ballot box. If we make it really hard for people to get on the roll, they are not going to do it and they will not participate in the political process.

The arguments put forward earlier centred on rorts that people try to obtain for themselves when they get in here. This parliament has enjoyed a very poor reputation since we have been here. I think our reputation has been enhanced a bit in the last three years or so, even though I think it could be a bit better. If it has not been enhanced, it is because of the black handkerchief brigade who sit there and say, "Convince me." They do not participate. They do not come into this chamber and put their five bobs worth into debate. Only when it looks as though their perks are going to be removed do they get up on their high heels and say something.

They do not participate well in committees. Again, they sit there with the black handkerchief on their heads saying, "I will listen and do absolutely nothing." I did not criticise Mrs Burke's work ethic in the Estimates Committee. I criticised her relationship with her party machine, but I did not criticise her involvement. She asked a number of questions. I did not like the questions she asked, but that is not my problem.

Mr Moore: Mr Speaker, I take a point of order on the grounds of relevancy.

MR SPEAKER: Indeed, but I am sure that Mr Hargreaves is coming back to the point.

MR HARGREAVES: The point was that this parliament does not enjoy a great reputation. Mrs Burke made much of that in her attempt to table her dissenting report. If people want to participate in the political process, they have to have a high regard for the institution of parliament and they have to want to exercise their vote. If we stick hurdles in the way of them being able to exercise their vote, then they are not going to be bothered. If we make a mockery of this parliament, they are not going to be bothered. I support Mr Stanhope. This legislation puts a hurdle in their way. I think we should not go along with that hurdle.

MR STEFANIAK (Minister for Education and Attorney-General) (8.18): Mr Speaker, I want to speak again on this. I do not normally do this. I see a real problem if Mr Stanhope's comments get up. I mentioned earlier that I did not see a huge problem with donations in this country. I honestly cannot think of any instances where they have been a problem. However, we have had instances of electoral fraud—people on the electoral roll who should not have been there.

In the 1995 election I saw three young blokes vote at Spence at about 3.30. In those days we had how-to-vote cards. I went from Spence to the Charnwood booth. At 4.30 these same people turned up. I said to one of our workers, "Go in and tell the electoral officials." They did, the people were questioned and they did not vote again. I do not know who they were voting for. Good heavens, they might have been voting for me, but they should not have been. Something was going on there. I do not think anything happened to those people. They just left the scene and nothing was done. But we have seen instances of electoral fraud in Australia.

The Electoral Act 1992 states in section 76, at subsection (3):

> **(3)** A claim shall be—

(a) in the approved form;

(b) signed by the claimant and the signature witnessed by an elector or a person entitled to be an elector ...

There are no real checks and balances there. That is such an incredibly broad category of people who can witness a signature. All this clause seeks to do is to ensure that the person who witnesses the signature is a person who can attest an enrolment claim under the Commonwealth Electoral Act. Yes, it does restrict it. Witnessing signatures for a lot of things in this country is restricted, and for good reason. This is a check to make sure that the person who says they are able to vote and wants to vote is in fact entitled and eligible to vote.

People in this Assembly have already talked, and will no doubt during the evening continue to talk, about all the dreadful things that can happen if you do not disclose the names of people who give money under $1,500. This is an area where there have been rorts. We know there have been rorts. I have given an instance of an attempted rort I saw. We need to be careful. We need checks and balances. Whilst there may be a tiny bit of inconvenience in having a signature witnessed, it will not be all that difficult, with all the categories of people who can witness signatures. At least there is some check and some balance, rather than a blanket approach of anyone over 18 being able to witness a signature.

This is one area that is open to rorts, and we have seen rorts in Australia, with people being put on electoral rolls when they should not have been there. We do need to be careful, because that does bastardise and corrupt our system.

MS TUCKER (8.22): I do not understand the argument from Mr Stefaniak. He seems to be saying that we are going to have an improved situation if we support this, but we do not know what the situation will be, because the Commonwealth has not come to agreement with the states about what the regulations will say. So why is it that you are telling us—

Mr Stefaniak: You have got a class of persons.

MS TUCKER: I have just had advice on that. It is still being negotiated. So why are you telling this place that it is an improvement when we have no idea what "it" is? If you want to change the situation, I suggest it would be better to wait until something has been agreed at the Commonwealth level. Then we can have an informed debate.

Clause 9 negatived.

Clauses 10 and 11, by leave, taken together and agreed to.

Clause 12.

MS TUCKER (8.23): I ask for leave to move amendments Nos 1, 2 and 3 circulated in my name together.

Leave granted.

MS TUCKER: I move amendments Nos 1, 2 and 3 circulated in my name *[see schedule 5 at page 1988]*. I will speak to these three amendments together as they are interrelated. Amendments Nos 2 and 3 are consequential to amendment No 1.

Under the Electoral Act candidates from registered parties get their own column on the ballot paper, with the party name at the top of the column, and Independent candidates get listed together in one column at the end of the ballot paper. It is possible, however, for any Independent candidates in a particular electorate to group themselves by agreement in their own column, but they do not get a name on the top of the column.

Currently a party can be registered in the ACT if it has 100 members or an elected member of an Australian parliament. In previous elections Independent MLAs Mr Moore and Mr Osborne registered themselves as parties so that they could get a separate column on the ballot paper rather than be listed with all the other Independent candidates.

The Greens regard this as an abuse of the party registration scheme. The other candidates who stood under these parties of convenience were clearly not part of a larger political party, but were standing to support the incumbent MLA. The parties of convenience were also quickly abandoned after the election, as we have heard in some detail from Mr Berry.

However, rather than stop this, the government has now facilitated it by allowing Independent MLAs to register their own individual groups and to have their own columns on the ballot paper with the name of the group on the top, just like a party. These groups can contest any electorate, including those electorates where the Independent MLA does not actually sit.

I understand that no other state has a provision in their electoral act for ballot groups. These ballot groups have all the appearances of a party, but the only difference seems to be that they cannot use the word "party" in their name. This is a minor inconvenience, however, as many parties do not use the word "party" in their names—for example, the ACT Greens, Australian Democrats, and One Nation. Mr Osborne and Mr Moore did not use the word "party" anyway in their party names.

What worries me is that the voting public may be misled by seeing all the columns on the ballot paper with various names above them and thinking that they are all parties when in fact some of them could be just fronts to help existing Independent MLAs to be re-elected. It is certainly unfair to other Independent candidates who do not have any right to form their own ballot groups and end up being lumped together at the end of the ballot paper.

Having your name clearly seen on the ballot paper is quite important in the ACT because of our lack of how-to-vote cards, and getting your own column is the best way of doing this. The Robson rotation, which is so cherished by the Liberal Party, is based on the principle that all candidates should be treated equally on the ballot paper and not be given any special privileges, such as by being No 1 on a party ticket. The establishment of ballot groups flies in the face of this because it gives a formal advantage to sitting Independent MLAs over other candidates, as it gives them

a special place on the ballot paper in their own columns with their name on the top of the column.

This legitimisation of parties of convenience is bad enough, but the government has conversely made it more difficult for genuine parties to be registered as they now have to have 100 party members regardless of whether they have an elected member. The Greens are prepared to accept this tightening of party registration, although I know that some party members do not like the idea of having to submit a list of our members to the Electoral Commission for checking because of the implications to their privacy. We are nevertheless prepared to accept this change if it is applied fairly across all groups of people who want to contest elections.

But the introduction of the ballot groups for Independent MLAs has made a mockery of this new rule as they do not have to prove that they have at least 100 supporters. Only parties have to do this. My staff talked to the Electoral Commissioner and asked why there was this difference. The commissioner merely said that Independent MLAs have already proven they have lots of supporters by being previously elected. If this is the case, why should parties with elected members have to prove that they have 100 members?

The lack of logic here is easily exposed by looking at my own case. I got over 3,000 first preference votes in the last election, yet the ACT Greens will have to prove to the commissioner that they have at least 100 supporters before I can stand again as their representative. Mr Moore, Mr Rugendyke and Mr Osborne, as Independents, will not have to prove this if they want to establish their own ballot groups. If the ACT Greens membership drops below 100 it will have to deregister, yet, in theory, I could set up my own ballot group called, say, "Kerrie Tucker's ACT Greens", and still run the same candidates.

Regarding my amendments, ideally I would have liked to have just removed the new provision for ballot groups, but this would have required a virtual rewriting of this bill because much of it is about inserting the term "ballot group" wherever the word "party" appears. To save work on my and the drafters' part, I have put up a less complex amendment which merely applies the new requirement that parties have 100 members to ballot groups, thus negating their advantage over parties.

If some members in this Assembly want to be treated as Independents they should be prepared to stand as Independents in elections. If they want to start their own parties they should do the work of setting up a proper party organisation. They should not be using parties of convenience, whether called parties or ballot groups, to give them an unfair advantage over other candidates.

MR KAINE (8.29): I find this part of the debate rather curious because the fact is that every member of this place has an advantage over candidates who are not members. Does Ms Tucker pretend to tell me that when she stands as a candidate for the ACT Greens she is not in a better position to get herself elected than some new Green candidate standing down in Tuggeranong that nobody has ever heard of?

Ms Tucker: Of course I am, but you don't have to make it even more so.

MR KAINE: What you are trying to do is to—

Ms Tucker: Of course an incumbent has an advantage.

MR KAINE: I spoke about this the other day. What this legislation does is put hurdles in the way. We started off with this grand vision of the Hare-Clark system with the Robson rotation. The beauty of it, we were told, is that it opens up opportunity for Independents and small parties who do not have the resources that the bigger parties have. That was supposed to be the big advantage of the electoral system. It has worked fine for nearly 10 years, and now somebody thinks we have to put these extra hurdles in there in the way of Independents.

Ms Tucker: But not Independents in the Assembly unless they are here.

MR KAINE: It does not matter whether we are members of this place—

Ms Tucker: So here it's easy-peasy.

MR KAINE: Oh**,** Mr Speaker—

MR SPEAKER: Yes, I do have to ask—

MR KAINE: Everybody has their say until somebody stands up and says things they do not like, and then everybody wants to have their say.

MR SPEAKER: Ms Tucker, you do not normally interject. I am shocked. In fact, I am appalled.

Ms Tucker: I apologise.

MR KAINE: I notice that I do not get these interjections when I am saying things that everybody likes. It is only when I am saying things that people do not like that I get them.

MR SPEAKER: I am surprised you could ever be heard, Mr Kaine, but never mind.

MR KAINE: If it was good enough for Mr Osborne and Mr Rugendyke to stand for election for this place three years ago as an Independent group, by getting a couple of signatures and going along and paying their $250 and registering, why is it not okay this year? Why do people like Ms Tucker and others deem it necessary or desirable to put additional hurdles in the way? The only reason that I can think of is that you want to get rid of the Independents because they are a bit of a nuisance and they take some of the votes that you might otherwise get. When they get elected they can be a bit of a nuisance because sometimes they do not vote the way you would like them to.

I made the point the other day. I did not intend to speak at any length at this stage of the debate, but the fact is that we are still having people putting up these propositions that Independents should be brought up to the point where they are competing on the same basis as members of major parties. Well, I am sorry to tell you that we do not

have the resources to do that. Independents do not have the resources to compete in elections on the same basis as major parties.

Now, if you think we should, do not tinker with the legislation by putting hurdles in here like this. Remove the provisions from the act that have to do with the way the Hare-Clark system works to make it difficult. Let's be realistic about it: make it difficult by changing the electoral system. This proposition means that if I want to enrol for election now as an Independent I have to produce the names of 50 supporters before the Electoral Commissioner will take my $250. I did not have to do that three years ago, or six years ago, or nine years ago, but this year I have got to produce a list, according to Mr Stanhope, of 50 supporters. When Mr Stanhope goes along to register and enrol, does he have to produce a list of 50 people? No, he does not. Does Mr Stefaniak? No, he does not. But if I go along to enrol as an Independent I have to have my list of 50 supporters as well as my $250.

I come back to the point I made the other day. I thought that the determination of whether you had enough support to get elected or not came when you went to the ballot, because you have to get a lot more than 50 votes. Considerably more. So why this artificial barrier of producing a list of 50 names of people who support you before you can even nominate? What is the merit of that? Whose interests are you serving?

Ms Tucker: He's not asking me.

MR KAINE: I am asking you. Whose interests are you serving?

Ms Tucker: You are not talking to my amendment.

MR KAINE: Well, you are saying that I have to have 100 backers.

Ms Tucker: Yes, for you if you want a ballot group. But not if you just want to be an Independent.

MR KAINE: I am saying to you that you have a party organisation behind you which you have had for years, and even when the Greens began in the territory you had the backing of a party behind you that existed elsewhere in Australia, and I am starting as an Independent. I do not have that party organisation. I do not have that party support. I'm just me, and I am going to be saying to the community, "Here I am. I am Trevor Kaine and I would like you to vote for me." I have to meet the same requirements that you do as an organised party with all the resources that you have available to you.

It is simply putting a barrier that prevents me jumping that first hurdle, or makes it more difficult, as Mr Rugendyke said. He will jump the hurdle, and so will I if I have to, but what is the purpose of this hurdle? Whose interests are you serving? Are you serving the interests of the community, the electorate? I do not think so. I do not see how you do.

Mr Speaker, I am opposed to these artificial barriers that it is now being proposed be set up to make it more difficult for me to stand as an Independent candidate, if that is what I choose to do. Nobody has justified it yet. I can see that there is some selfish self-interest in it, but there is nothing in there that works in the interests of the

community. Until somebody can convince me that there is some community benefit out of this, I am going to vote against it.

MR MOORE (Minister for Health, Housing and Community Services) (8.36): Mr Speaker, I think Mr Kaine is quite right, but in a way Ms Tucker is right about this as well. As I was sitting next to Mr Stanhope when we were on ABC Radio the other morning he made the point that the amendments to the Electoral Act were dealing with the advantage that Independent MLAs have over others. So I sat down and I thought, "How do you resolve that problem?" It is something that Mr Stanhope raised and which I took seriously.

I looked at how Ms Tucker has solved that problem and I have determined that the downside of solving the problem the way Ms Tucker has done it here is, as Mr Kaine identifies, that you give a greater disadvantage to some of the players or you leave yourself and the other parties with an advantage that the Independent MLAs then no longer have. Remember, this legislation already removes their ability to have a party. So it already has taken one step. This legislation already takes away one advantage that they have, and there are a series of advantages to having a party.

So I went over and I looked at a ballot paper from Ginninderra. I thought it was a very interesting example. On the ballot paper from Ginninderra we have one of these groups, the Osborne Independent Group, and underneath there was Dave Rugendyke and Hilary Back. In the next column were Cheryl Hill and Derek Hill. The Osborne Independent Group have the same advantages of a party of being able to take a name already well recognised in the community, Osborne's name, which he has effectively lent to Mr Rugendyke; just the same way as the Greens lend that to Shane Rattenbury and others in that electorate, and the Labor Party lend it to Wayne Berry and Jon Stanhope, and so on. But the Hills missed out. What you are saying correctly here is why should the Hills have missed out on that advantage? I think you are right.

So I asked my senior adviser to prepare an amendment today to allow them to have the same right as the rest of us to have their name in a group. It could be called, if you like, the Hill group. Unfortunately, Cheryl Hill has passed away. Nevertheless, it is a reasonable example. The name, the Hill Independent Group if you like, could be at the top of the paper. As soon as somebody picks up a ballot paper they read across. If somebody wants to be grouped, if they want to lend their name, they can, or even if the Hills want to lend their name in Molonglo they can do that as well. Now, that seemed like a sensible solution.

Unfortunately, because we only had two days to prepare the amendments, we ran into some problems. My senior adviser checked with the Electoral Commissioner who identified a couple of problems with that and we were not able to resolve those problems within the timeframe.

I will oppose your solution because I think it is the wrong solution, but I am prepared to go back and look at this. I think we can find a solution that provides an equitable provision that does not disadvantage those non-MLA Independents who wish to be grouped and does not give an advantage to parties by having them the only ones above the line. That is a much more equitable way to go about it, and that is why I will be opposing your legislation. I will do further work, which I am quite happy to do, and

work with your staff as well, if you lose this amendment, to make it fairer and more equitable.

When I listened to Mr Stanhope the day before yesterday I thought he had a point. I hope that other members listen sometimes during this debate and say, "Yes, there is a point there. Perhaps we do need to do something about it." Maybe the solution is here and maybe it is not, but let us work on getting sensible and equitable solutions to these problems.

MR STEFANIAK (Minister for Education and Attorney-General) (8.41): Mr Speaker, this amendment would require applicants for registration of ballot groups to prove that the ballot group had at least 100 members who are electors on the electoral roll. That would require a ballot group to satisfy the same membership requirements as parties. The only difference between the two categories would be that a ballot group would not be required to have a constitution, and a ballot group could not use the word party in its name. This would prevent a non-party MLA from registering a ballot group name for use on ballot papers without having the support of at least 100 electors who are prepared to become members of the ballot group. I am amazed in a way that the Greens are putting it up. I suppose they are a party with more than 100 people, and again I think we are seeing self-interest come in here.

The Liberal Party will not be supporting this amendment. We are reasonably comfortable with the non-party groupings. Mr Moore raised a very good point and a fair point. I thought he was moving amendments to this effect.

Mr Moore: I was trying to get it ready.

MR STEFANIAK: You were trying. It probably means, Michael, that we are opposed to all the rest of your amendments, but anyway. He gave a wonderful example of Derek Hill and the late Cheryl Hill, who was a tireless campaigner and a former member of our party but went Independent with her husband. Yes, why on earth shouldn't the Hill group be grouped just like the Osborne Independents, or the Greens, or the Liberals, or the Labors or anything else? I think Mr Moore raised a very valid point. I think that would assist the legislation if and when he brings something forward to that effect.

Mr Speaker, we will be opposing Ms Tucker's amendment here, and indeed her amendments 2 and 3 which are consequential on amendment No 1.

By the way, Mr Green has pointed out to me that when we go back in relation to this legislation, as a result of the vote on clause 9, clause 10 is consequential to clause 9, and it should also be negatived. I make that point.

MR SPEAKER: That will be dealt with at the end of this piece of legislation, if we ever get there.

MR STEFANIAK: Yes.

Mr Moore: I expect we will be there before dawn.

MR STEFANIAK: God, I hope so.

MR STANHOPE (Leader of the Opposition) (8.43): I will be very brief. The Labor Party will support Ms Tucker's amendments in relation to the ballot groups. We think Ms Tucker makes a very good case. I think it is a very fair point that she makes; that this really is a levelling of the playing field in relation to the position of Independents within the Assembly and those without who stand for the first time and seek to gain election.

I think the vital point that Mr Kaine missed in his comments is that Ms Tucker's determination and intent here is to change the nature of the relationship between sitting members as opposed to those who do not have the privilege of having been elected. I think the point can be made when one looks at the Independents or the so-called Independents in this place that each of them was elected as a member of a party or a so-called party.

Mr Moore: No, Mr Osborne was not, Jon.

MR STANHOPE: Mr Osborne was not in the first election, that is true, but it is a very convenient route into the place, traditionally, in terms of this particular parliament. Members get elected as members of parties and then defect the parties and occupy this very privileged position. In the context of much of what we have heard, much of the bluster and fluster we have heard, and the sort of self-righteous jockeying for a moral position in relation to this particular debate which really is extremely unedifying—

Mr Moore: After what Wayne said? You hypocrite.

MR STANHOPE: You earned that.

Mr Moore: You great big hypocrite.

MR STANHOPE: You earned that speech from Mr Quinlan and you earned that speech from Mr Berry. The three of you did. You were appalling. Read the *Hansard* tomorrow. You were absolutely—

Mr Moore: I heard it. I was in there eating my dinner.

MR STANHOPE: You were appalling and you earned in spades both Mr Quinlan's speech and Mr Berry's speech.

Mr Rugendyke: Rose coloured glasses.

MR STANHOPE: You earned it in spades.

Mr Moore: You great big hypocrite.

MR STANHOPE: Well, in terms of hypocrisy, we see Mr Moore's two bob each way. He said, "Ms Tucker, I actually agree with you. I agree with you, Ms Tucker. I agree with what you say. I would love to support you, but I'm not going to." It was the classic two bob each way, the Michael Moore position. "I agree. You are right.

I would love to vote for you. I would love to support you, Ms Tucker. I agree with you. I agree with everything you say. I might do it down the track. If I can get re-elected I will do it in the next term." You cover yourself, don't you. "Yes, I'm not the hypocrite. I am not going to take a ballot group for myself because I think you've got a point; but I will just have to do it for this election and we will try to fix it up next time around." So says Michael Moore, the prince of politics. "Yes, I'll say I support that, but I won't vote for it. I will do it down the track." The prince of politics. Yes, you say you support it, but then you vote against it and promise to do it later. What a remark.

Mr Moore: Yes, there we are.

MR STANHOPE: Learnt from the master. We will see. I think we will see how sweet self-interest is.

MR MOORE (Minister for Health, Housing and Community Services) (8.46): The interesting thing, Mr Stanhope, is that we get two goes at legislation like this, and—

Mr Stanhope: We do, Mr Speaker, indeed.

MR SPEAKER: Everybody does.

Mr Stanhope: We do, Mr Moore, and I've got another go.

MR MOORE: You totally misrepresented my position there. What I actually said—

Mr Stanhope: No, I didn't.

MR MOORE: The trouble is, Mr Stanhope, that when other people are speaking, instead of listening, you constantly just talk to the person next to you or the person behind you or somebody else as you lean back in your chair with your back to the Speaker, as you always do with your normal disrespect for this house and the Speaker.

Mr Stanhope: Here we go.

MR MOORE: That is right. You talk about unedifying behaviour. Look in the mirror. Do not misrepresent what other people say. What I said was that I agree with the problem that Ms Tucker identified, and I even said I agree with the problem you identified the other day on the radio. What I disagree with is the solution. I indicated a solution that I was trying to find. I indicated the problems that I had run into with the solution, and I indicated that I was looking to come back to that, not after the next election, Mr Stanhope—

Mr Kaine: Next week.

MR MOORE: Preferably as soon as I can, if I can find the solution. I said to Ms Tucker, "I will move with your staff." So you are misrepresenting me, the same way as you do with almost everything you do. It is totally unedifying and disgusting. The sort of behaviour that you have brought into this place—

Mr Stanhope: Here we go.

MR MOORE: I would say, without hesitation, having been here for some 12 years, that nobody has lowered the standard of this house as much as you have.

MR RUGENDYKE (8.48): This amendment of Ms Tucker's is yet another example of a politically motivated one, not from a major party but this time a minor party. It is another assault on the Independents.

Mr Moore: You have lied so much. You just couldn't stand Kate Carnell because she just stood you up so much.

Mr Stanhope: Where is she now, Michael?

MR SPEAKER: Order, please! I would like to hear Mr Rugendyke.

MR RUGENDYKE: Thank you, Mr Speaker. As with the majority of amendments being debated here today, I am being guided by the recommendations of the Electoral Commissioner. There was a report signed on 27 November 1998 titled *The 1998 ACT Legislative Assembly Election*. I certainly had no input into that report. I think it was Mr Moore who said earlier this week that the bill before us, the original bill, was a good bill. This bill appeared to me entirely consistent with the recommendations made by the Electoral Commissioner in 1998. In fact recommendation 9 of that report said:

> MLAs who are not members of a registered political party, Independent MLAs, may register a group name for use on ballot papers.

This followed a section in which the Electoral Commissioner addressed issues relating to parties of convenience. The commissioner concluded that ballot groups were a solution on the basis that the member "had demonstrated a significant level of community support by being elected".

This was the fair-minded recommendation of the Electoral Commissioner and this is what is reflected in the original bill. Any other amendment, particularly by parties that have expressed a very public political motivation, has to be treated with the appropriate cynicism. So, Mr Speaker, I will be guided by the Electoral Commissioner and I will not be supporting this amendment.

MS TUCKER (8.51): I will make a brief response. Mr Rugendyke did not address the arguments that I put, which are arguments to the Electoral Commissioner's point, so I do not know what his arguments are. Obviously he is just quoting the Electoral Commissioner, and that's fine. What he does not seem to want to respond to, and I might repeat it in case he did not understand it or hear it, is that—

Mr Rugendyke: Oh, I understand it.

MS TUCKER: Well, I wish you had addressed it in your argument, Mr Rugendyke. The fundamental concern I have, which Mr Moore has understood and argued back to or addressed in his argument with a different alternative, the fundamental point I am

making, is that through this you and other Independents are advantaging yourselves against Independents in the community who are not here. That is the fundamental unfair aspect of this legislation.

I have already addressed the argument that you have 100 supporters in order to have got here. You have not addressed that argument, as it is obvious that I also got 100 votes, but as a party I have to get 100 members. Now, I am happy to work with that. The fundamental issue of this, apart from that aspect of the unfairness of what you are doing and how it is very much about ensuring your position as someone who is in here at the expense of Independents out there, is the fact that if you are going to have these groups, whatever they are, then they are nothing; they are a group of people who want to get elected, and so, in order to get elected, they are going to put themselves in a column.

What does the Paul Osborne group stand for? You use Paul Osborne's name to get elected, but you have no common policy. As soon as you got here you said, "We are Independents. We are not a party. We do our own thing." So what are you actually saying to the community when they see these columns?

I cannot understand how you do not see it as a totally cynical manipulation of the electoral system in order to progress your own electoral chances. That obviously is what it is about or you would not have done it. Not only have you done that, and that has been legitimised here, but you are disadvantaging other Independents who you say you want to see in the Assembly. You are lauding Independents as the defenders of right and justice. You, as an incumbent, are disadvantaging them. You already have an advantage, as Mr Kaine said. Anyone has an advantage if they are in here, but you are actually making it even more of an advantage. It looks like self-interest, and that is what it is.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendments negatived.

Clause 12 agreed to.

Clause 13.

MR STANHOPE (Leader of the Opposition) (8.58): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 6, part 1, at page 1990]*.

The purpose of this amendment is to alter the requirements in relation to a nomination of a candidate. As the act currently stands a person may nominate to be a candidate for election in an ACT election if the nomination is witnessed by two electors entitled to vote at the election. The proposal I make is that the requirement for the nomination to be by two electors entitled to vote at election be amended to read 50 electors. That is the requirement in the federal Electoral Act. It is the requirement that applies to all members who seek to stand in those circumstances for a federal election.

I think there are very good reasons why a candidate for election to any parliament, and this parliament is no different in this regard, should signify at the outset that they have at least some level of support. Fifty is not very many. Two, I think, is quite derisory. If there are people seeking election to this place, acknowledging that in order to be elected they are going to have to attract a few thousand votes, 3,000 to 4,000 as a minimum to stay in the race, it is not much to ask that they find 50 other citizens who are prepared to nominate them just for that purpose of indicating that they do have some level of support.

There has been some discussion tonight about the regard in which this Assembly is held by the community. Some of the difficulties that the Assembly has suffered over the years go back to its very early days when the Assembly was certainly treated with some real contempt by the people seeking to be elected. They had no intention and no desire, in effect, to be elected. They simply wanted to be a candidate and simply wanted to be involved in the process for the fun of it. They just wanted to see their name on a ballot paper. Their only motivation was just to stir, and perhaps just to have some fun at the expense of the institution, at the expense of the parliament and, ultimately, at the expense of democracy.

That is the purpose of the change—to seek to discourage people with those sorts of attitudes nominating for election in the first place. As I say, to suggest that 50 signatures for nomination is onerous does not stand any real scrutiny. That is the purpose of the amendment, and I commend it to members.

MR STEFANIAK (Minister for Education and Attorney-General) (9.02): Mr Speaker, whilst I suppose the government feels that 50 is not terribly onerous, this is one area in terms of consistency with the Commonwealth where we think the figure should be lower, hence my amendment which I formally move to Mr Stanhope's amendment to substitute 20 for 50 *[see schedule 4, part 3, at page 1987]*.

Mr Speaker, there is a difference between the ACT and the Commonwealth. The Commonwealth has two houses, the Senate, which is a state and territory house, state and territory wide, and the House of Representatives, which has single member electorates, many of them the same size as our multi-member electorates in the ACT. I think there is a strong case for a number less than 50. I think 20 is a very fair number. I do not know about the Labor Party but in our own party I can recall once having to get about 30 or 60 signatures to stand for the Senate in 1987, and quite often we required 10 or 20 signatures for—

Mr Quinlan: How did you go mate?

MR STEFANIAK: I did a lot better than the last No 2, Teddy. The only way you get in as No 2 on the Senate ticket in a major party in Canberra is if their No 1 gets hit by a bus after they issue the writs, and that is yet to happen. I think 20 is a reasonable number. I think it is fair for the minor groupings, for Independents. It is not particularly onerous, but at least it indicates some level of support. It is quite manageable. I do not think it disadvantages anyone. We think 50 is fine federally, but the ACT is that much smaller. The Liberal Party thinks 20 is a fair figure. Accordingly, I commend that to the house.

MR KAINE (9.03): Mr Speaker, this is one of those hurdles that I spoke about. Mr Stanhope justifies his amendment to make it 50 on the ground that somehow or other this establishes some sort of credibility for the candidate. Fifty constitutes credibility. The Electoral Commissioner thought two did. The Liberal Party thinks 20 does. So it is an interesting debate about how many signatures you have to get on a bit of paper before you are a credible candidate. Even if you had 1,000, does that necessarily make you a credible candidate? If somebody wants to take the mickey out of the electorate as some people before have done and stand with some very odd party titles, does getting 50 signatures change their attitude, or 20, or 10, or 6 or 18? It is a fiction, Mr Speaker. Mr Stanhope is expecting us to build into our Electoral Act a fiction that 50 signatures on a bit of paper constitutes credibility before a candidate can go and nominate to the Electoral Commission as a candidate. There is just no substance to that proposition at all.

I think somebody made the rather idiotic comment in here the other day that all you have to do is get your mum's and dad's signatures. Well, maybe that is not bad. If your mum and dad both think that you are worth standing as a candidate, maybe that is a pretty good qualification. I know a lot of mums and dads who would not think their kids could hack it and they would not nominate them.

I just do not understand this. It is simply setting another hurdle in the way of Independents. Mr Stanhope, when he goes to enrol, will not have to take his list of 50 candidates with him. My guess is that in some of the party branches, Liberal and Labor, some of the candidates at the tail end of the preselection list got up with maybe six votes from the preselectors in their own party, maybe six. Because they are the last candidate, they got six votes and they are in as a candidate. But when Independents turn up they have to have 50.

Mr Moore: Or even 20, with the amendment.

MR KAINE: Or even 20, yes. There is just no justification for Mr Stanhope's position. He has not put forward any argument that says that 50 is a good number. Nor have the Liberals put forward any argument that 20 is a good number. It is just a better number than 50 in their view. Well, I reckon two is a good number. I reckon the Electoral Commission got it right.

If it comes to an argument about 50 or 20, I will go for the 20 every time because it is less of a hurdle, and I think the other Independents in this place would say that. I would like to see the amendment thrown out, together with the Liberal Party's

amendment, and stick with what was put to us, as Mr Rugendyke says, after an investigation by people who are better qualified than any of us to make a judgment about it. They said two. So I will go for two, if I get a chance.

MR RUGENDYKE (9.06): Yes, this is another one of those little hurdles that we are expected to jump. I will live with it. I will find as many signatures as Mr Stanhope wants. Being a bit cynical, perhaps this is the deal that this lot gave this lot for the $1,500, to lower the bar. That will be the deal. That is what it will be.

Ms Tucker: How can you deal? They both vote together against you. What is the deal?

MR RUGENDYKE: Yes, I know. One of them had to convince the other to lower the bar on the $1,500. That probably is the deal. Okay, I will live with whatever the result is. I do not know what I am supporting here. I will live with the result.

MS TUCKER (9.07): We will not be supporting the ALP moves to make it harder for people to stand as Independent candidates. Having a diversity of candidates is good for democracy under the current system, but we do not like it when a few sitting Independents want special treatment for themselves. We do not like that. We like it when all the Independents can have an equal go. We like it when it is a fair go.

Mr Rugendyke: Only the ones you do not like.

MS TUCKER: No, it has nothing to do with who I do not like. I like it to be fair. When you choose to stand as an Independent and not as a group, you will only need two signatures if the Greens get their way with this amendment. We are not supporting the Labor Party on this amendment. Under the current system where only two signatures are required to support a candidate nomination, we have not seen a rush of Independent candidates. In the 1998 election only 21 per cent of candidates were Independents. The rest were from parties or the Independent parties of convenience.

People are not going to be Independent candidates just because they only need to find two other people to back them. There are already enough barriers to Independents doing well in elections—for example, the difficulties in getting funding, resources and media coverage. You are only going to get the most committed or foolhardy people putting their names forward. I do not think we need to raise the barrier even higher by requiring them to get 50 signatures. This number is certainly way out of proportion to the requirement for parties to have a minimum of 100 members. We are quite happy to stay with two signatures.

MR MOORE (Minister for Health, Housing and Community Services) (9.09): Mr Speaker, I think Mr Kaine aptly made the case here; that this is about putting more difficulty in the way. Clearly the Labor Party is threatened somewhat by the Independents who run. After this week I imagine they will be threatened a lot more if the smell of what the two major parties has done seeps through yet even further into the electorate. People will realise that they are more and more on the nose, as they are right across this country.

Mr Speaker, the most critical thing that we will deal with tonight is the funding of political parties and the disclosure of funding. What Labor wanted for this was to be able to shaft a few little parties and they are prepared to trade off that for what they want to get here, the rules about disclosure which will allow big business to influence political parties, although not so much probably their own. I think there is some merit in the way Mr Stanhope argues that it is not likely to influence the Labor Party as much. I think that is true. But they are prepared to trade off for what will clearly roll down the path that America has gone in the democratic system, where basically parties can be purchased and the influence is done with money. They are prepared to trade it off so that they can shaft a few minor little parties. That is what is really sad.

Mr Stefaniak's amendment to **Mr Stanhope's** amendment agreed to.

Question put:

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

The Assembly voted—

Ayes 10		Noes 5
Mr Berry	Mr Quinlan	Mr Kaine
Mrs Burke	Mr Smyth	Mr Moore
Mr Corbell	Mr Stanhope	Mr Osborne
Mr Cornwell	Mr Stefaniak	Mr Rugendyke
Mr Humphries	Mr Wood	Ms Tucker

Question so resolved in the affirmative.

Amendment, as amended, agreed to.

Clause 13, as amended, agreed to.

Clause 14 agreed to.

Clause 15.

MS TUCKER (9.16): I ask for leave to move my amendments Nos 4, 5 and 6 circulated in my name together.

Leave granted.

MS TUCKER: I move my amendments Nos 4, 5 and 6 *[see schedule 5 at page 1988]*. I will speak to these amendments together as they all relate to the one point. The main amendment is No 4.

This amendment was developed in response to the new provision that the commissioner must reject candidates whose names are frivolous or assumed for a political purpose. In the explanatory memorandum the government provided various examples of such names. While such names may sound frivolous to us, the people who

adopted these names obviously thought the issues were important enough to want to change their names.

The Greens believe that this provision is a restriction on freedom of political expression. Candidates should be allowed to call themselves whatever they like, provided it is not obscene, and it should be left to the voters to decide whether they appreciate the name or not. We do not think the Electoral Commissioner should be deciding which names are political or frivolous as this can be quite a value judgment.

However, we think there is a legitimate problem if a candidate intentionally adopts a name of another party or candidate for political purposes as this could be misleading and confusing. If we just totally rejected such names this could cause problems for people whose birth names include a party name, Phil Green, for example, or who were really called Michael Moore or John Howard. That is why my proposed new subsection (2A) specifically says "may" while proposed subsection (2) says "must", so the commissioner would have discretion to still allow candidates whose legitimate names clash with the names of other parties or candidates.

MR MOORE (Minister for Health, Housing and Community Services) (9.18): Mr Speaker, I think this is one of the sillier amendments that we see from Ms Tucker. On the one hand she says the only reason we have obscene and none of the other criteria is because value judgments are used. Then she goes on to describe why she has given the commissioner discretion to make a value judgment about how names of parties may not be used. She used as a very good example that nobody with the name of Mr Green is likely to be able to run or to put value judgments on it if in some way it appears to interfere with the ACT Greens or the green party or something along those lines.

I think it may have caused a problem for Mr Osborne last election when, as I recall, he was running with one Linda Moore. I may well have lodged an objection. The commissioner may have used his discretion to say no, that is okay, but when the commissioner uses discretion that is always appealable. We could get a set of appeals going.

These amendments that Ms Tucker puts forward are simply unnecessary. They are totally unnecessary. They would create a discretion, an appealable discretion, that is entirely inappropriate.

Ms Tucker: It is already there. The discretion is there.

MR MOORE: There are very good reasons, Ms Tucker, for the list of things other than obscene that are in the act. You may not remember, but Mr Stefaniak, Mr Wood and Mr Berry were there for the first election when a range of frivolous names drew a huge amount of media attention. The media always loves frivolous names. You may remember the Party Party Party, the Sun-ripened Warm Tomato Party and so on.

Ms Tucker: That is democracy, Mr Moore. That is freedom. That is democratic freedom.

MR MOORE: You see that as a democratic freedom, but it is appropriate for us to say that—

Ms Tucker: To stop it. Great.

MR MOORE: Ms Tucker, you did not work in that first Assembly. I can tell you that it was an extraordinarily difficult place to work in because, amongst other things, of the frivolous way in which people had taken it. It is appropriate for that to be an issue taken into account and identified. That is why, Mr Speaker, I will be opposing what I consider to be silly amendments.

MR STEFANIAK (Minister for Education and Attorney-General) (9.21): Yes, the Liberal Party will also be opposing these amendments. Under this change you could have names like "Pauline Hanson Hand Puppet", "Justice Abolish Child Support and Family Court" and all sorts of things that have been ruled invalid elsewhere.

One of the other anomalies is that there could well be difficulties in terms of the amendment inserting a new provision that states the commissioner may reject a nomination of a person if the person's name includes all or part of the name of another candidate whose nomination for election has not been rejected. That might well be unworkable. For example, if two nominations have been received nominating two persons with exactly the same name, there appears to be no reason why one such nomination should be rejected. That would be very unfair here. For example, there are apparently on the electoral roll currently two Paul Osbornes, and that is pretty scary. Even more scary are eight Brendan Smyths, four Willy Woods, two Wayne Berrys—oh, no, I wouldn't think so—and 10 Michael Moores. I think I know a couple of them apart from the gentleman on my left. Thank God there are not two Bill Stefaniaks, but there you go. Really, I think it can be a bit of a nonsense, and the government will not be supporting Ms Tucker's amendments.

MR RUGENDYKE (9.23): I once again will be guided by the wisdom of the Electoral Commissioner. I agree that the section as presented on his advice is appropriate.

MR STANHOPE (Leader of the Opposition) (9.23): Mr Speaker, the Labor Party will support Ms Tucker's amendments. We agree with the sentiment that motivates the amendments she proposes. I think the heart of Ms Tucker's amendments is basically how the Electoral Commissioner would exercise his discretion as to what is frivolous and what is unacceptable. It is all in the eye of the beholder. If anybody wants to register a party or to run and to be called any name that takes their fancy then certainly they can. I accept the need to limit the use of obscene names.

If there is a real concern, and it is a point I made that met with some resistance, there are other ways of deterring frivolous candidates; for instance, by requiring that they have 50 nominees. That is a much more effective way, it appears to me, of discouraging frivolous use of the process than some self-serving, egotistical or grandstanding determination being part of the process. At least require them to jump a couple of hurdles. Do not deny them their right to determine for themselves what name they are going to utilise for the purpose of the process.

I really cannot see the basis on which this is the sort of thing that should be delegated to an official; namely, determination of whether the name Sun-ripened Warm Tomato Party is unacceptable. There are other political party names around that some of us scoff at that are regarded as quite legitimate and mainstream. Who is it that has the right to decide those sorts of questions, and why do we delegate that sort of basic right to a statutory official? There are other ways of deterring frivolous applications.

Question put:

> That **Ms Tucker's** amendments be agreed to.

The Assembly voted—

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

Question so resolved in the negative.

Amendments negatived.

Clause 15 agreed to.

Clauses 16 to 19, by leave, taken together and agreed to.

Proposed new clause 19A.

MR STANHOPE (Leader of the Opposition) (9.29): Mr Speaker, I move that proposed new clause 19A, as in amendment 2 circulated in my name. be inserted in the bill *[see schedule 6, part 1, at page 1990]*.

The purpose of this amendment is to insert into the legislation a provision that allows an application form for declaration of voting papers for postal voting to be physically attached to, or part of, other written material issued by any person or organisation.

As members would be aware, this is a provision that applies to federal elections and most, if not all, state elections. It is a provision that allows any person or any organisation that wishes to be involved in the political process or in an election to attach these forms to any written material, most often electoral material or material that a party or member might choose to distribute in an electorate to their constituents. They are attached as a service to constituents, particularly those who might be seeking an application form for a postal vote.

It is a system that currently works here in the ACT. It is utilised in every federal election. In every federal election, including here in the ACT, candidates, political parties and others distribute throughout the electorate declaration forms for postal votes. It seems to the Labor Party that there is absolutely no reason why, if candidates

for election or persons or organisations involved in the political process engage in this activity for federal elections here in the ACT, affecting the very same constituents we service, we should not allow the same opportunity or capacity to people participating in elections for this parliament. There is no reason to discriminate between the two.

It is at times a service which many constituents—particularly the elderly, the less mobile, the frail, carers caring for people who cannot leave the house with ease—find invaluable. This sort of assistance is invaluable for so many people within the community. It is a service to constituents. It applies currently here in the ACT in relation to federal elections. There is absolutely no reason not to make this same service available in relation to local elections.

MR MOORE (Minister for Health, Housing and Community Services) (9.32): I love the straight face when these arguments are put.

There is a very good reason why this is currently illegal in the ACT and ought to be illegal in federal elections as well. When we conduct elections, we want to be as neutral as possible right across the system, in every way we operate. That is why we have an Electoral Commission. It is to run a neutral election in every way we possibly can.

If older people are not being serviced well enough with electoral ballots, then as a parliament, as a government, we have to say to the Electoral Commissioner, "We have a gap in our service. You have to get postal ballots out to people and get them back in. Not enough is being done." That is if there is indeed an inadequacy.

The party machines want to get some advantage by getting their material—if you like, their how-to-vote cards—to electors with the ballot paper. That is manipulating the role of the Electoral Commission. That is what is wrong with it. That is why it is currently illegal here. That is why it should be illegal in every other state and territory and why it should be illegal federally.

We should not be copying a system that manipulates the electoral system. We should be keeping our system pure and hoping that, when the right circumstances arise, others will say, "We want neutral elections." They can then look at how it is done in the ACT where it is done very effectively. It is in the hands of the Electoral Commissioner. When the job is done inadequately the parliament, the government, can say to the Electoral Commissioner, "You have to do it better." That is if it is being done inadequately, as I suspect it is not. But if it is, that is the way to resolve it, not through this amendment.

This amendment is not about looking after older people. That can be done in an effective way, if it is necessary. This is about parties trying to gain more votes. Small parties and Independents do not do it. There is nothing stopping them from doing it. If they want to become efficient, they can to do it as well. I agree that it is equitable in that sense. The most important thing is that we want our elections conducted in a neutral way, and the way to do that is to allow this sort of task to be done by the Electoral Commission.

MR RUGENDYKE (9.35): Once again, the commissioner did not recommend this—

Mr Moore: For good reason.

MR RUGENDYKE: For good reason. You have to be deeply suspicious about the motivation of the major parties when they give us this scandalous amendment as part of a secret deal. This is one of the most insidious of the scandalous deals—

Mr Moore: There are more insidious ones to come yet.

MR RUGENDYKE: There are more to come?

Mr Moore: Yes.

MR RUGENDYKE: I cannot believe it. It is a back door way of introducing how-to-vote cards, totally against the spirit of the Hare-Clark system. It is quite a scandalous, secret deal. But the numbers are there to get it through. That is a tragedy for the Hare-Clark system.

MS TUCKER (9.36): The Greens will not be supporting this amendment. The current section 143 in the legislation contains an offence against people who do anything to induce a person to apply for a postal vote, to send the postal vote to an address other than that of the Electoral Commissioner or to use a non-approved postal vote form. This offence is obviously to prevent voting fraud. By its nature, a postal vote is completed away from a polling booth and the supervision of Electoral Commission officials. There is thus potential for postal votes to be completed under duress or to be tampered with.

The ALP is now proposing to remove this offence and to allow postal vote forms to be included in party material sent out by parties. I agree that this is a dangerous move. I do not think the change has been adequately justified. If I correctly understand what has been said, the amendment is going to be supported by the Liberals. That is very disappointing.

Question put:

> That proposed new clause 19A be inserted in the bill.

The Assembly voted—

Ayes 10		Noes 5
Mr Berry	Mr Quinlan	Mr Kaine
Mrs Burke	Mr Smyth	Mr Moore
Mr Corbell	Mr Stanhope	Mr Osborne
Mr Cornwell	Mr Stefaniak	Mr Rugendyke
Mr Humphries	Mr Wood	Ms Tucker

Question so resolved in the affirmative.

Proposed new clause 19A agreed to.

Clauses 20 to 25, by leave, taken together and agreed to.

Proposed new clause 25A.

MR STANHOPE (Leader of the Opposition) (9.41): I move amendment 3 circulated in my name to insert a new clause 25A in the bill *[see schedule 6, part 1, at page 1990]*.

This proposal is to raise the threshold for public funding for candidates in ACT elections from the current 2 per cent to 4 per cent. This is another opportunity for members of the Assembly to stamp out those frivolous candidates we see. We are incredibly keen to ensure they do not sully the system.

This amendment reflects very much the situation in other electorates, certainly in the Commonwealth. I do not think it is too much to expect that a candidate who seeks election should attract a reasonable level of support before they attract public funding. This is a way of ensuring that we maintain the integrity of the system. The current 2 per cent is very low. It is not reflective of the circumstance in other electorates. We have a significantly large electorate. I have heard it suggested in debate around these provisions, that because the ACT is a small jurisdiction it is appropriate that we have an incredibly low threshold. In fact, Molonglo is a very large electorate. Molonglo is far larger than the average House of Representative seat. Even the seats of Ginninderra and Brindabella are large in the context of the quotas that many people seeking election to the Senate face in some states.

This amendment is very similar to the amendment I moved seeking to raise the level of support for a nomination from two to 50. It is in exactly the same vein. It is designed to ensure that we maintain some consistency across jurisdictions; that we seek to maintain some integrity in the parliament; that we discourage frivolous abuse of the political process just for a lark. It is not much to expect a serious candidate to obtain 4 per cent of the vote. That would at least concentrate the minds of those thinking about pursuing a nomination, and it would ensure that they take the matter seriously and not abuse it.

MS TUCKER (9.44): The Greens will not be supporting Mr Stanhope's amendment. We do not support the change in the threshold for election funding for a party or Independent candidate from 2 per cent to 4 per cent. Funding of election campaigns is a major issue for small parties and Independents. The public funding of election campaigns was introduced for the specific purpose of levelling the playing field between well-resourced and under-resourced candidates. We know that the major parties get huge amounts of corporate donations and have the resources to fund extensive advertising campaigns.

I am aware that a 4 per cent threshold applies for federal elections, but we should not automatically apply the same rules as apply to federal elections, because the electoral systems are quite different. It should be noted that under our Hare-Clark electoral system, with its multimember electorates, it is quite hard for minor candidates to get over 2 per cent, because there are so many other candidates competing for votes.

If we had applied the 4 per cent threshold to the last ACT election, then none of the Independent candidates who were not already MLAs or in their parties of convenience would have received election funding. The three Independents and one Independent group that received funding mostly only scraped over the 2 per cent threshold. The most successful was Manuel Xyrakis, who got 3.8 per cent.

In the last election only 41 per cent of all candidates got over 2 per cent of the vote, and only 18 per cent got over 4 per cent. Even our Chief Minister got only 2.45 per cent of the first preference votes. The 2 per cent threshold therefore appears quite appropriate to the circumstances of the ACT, and I do not think it should be changed.

MR KAINE (9.46): I agree with Ms Tucker. The statistics speak for themselves. This is yet another one of those hurdles that the Labor Party seeks to impose on individual members. Mr Stanhope is saying that if a party stands candidates the party gets money back if the whole party group gets 4 per cent of the vote. On the other hand, if an individual stands, the individual has to get the same 4 per cent.

Mr Quinlan: No, you have one of those groups so you get a column.

MR KAINE: I am reading Mr Stanhope's amendment, Mr Quinlan. It makes a distinction between a party or party group on the one hand and individuals on the other. Mr Stanhope's amendment says, for example, that a payment under this division may only be made for the votes cast for a non-party group if they are 4 per cent. But proposed subsection (1) says:

> A payment under this division may only be made for the votes cast for a candidate in an election if the number of eligible votes cast is ... at least 4% ...

If you are a single candidate, you have to get 4 per cent. If you are a party with 10 candidates, and the 10 of them get 4 per cent, they still get their money back. I do not see any equity in that. It is another hurdle making it difficult for Independent candidates. I do not support it, for the reason that Ms Tucker outlined. I think it is unnecessary and it is unproductive, but there is also another inequity.

MR OSBORNE (9.48): I rise in agreement with Ms Tucker and Mr Kaine. A fellow who ran in the last election as an Independent told me that he spent about $10,000, even though I did not see any ads from him. This amendment is heading us towards the electoral system in America, where you can run only if you have money. One of the strengths of our democratic process is that basically anyone can run. People who want to put their hand up need to spend some money.

This deal done between Mr Stefaniak and the Labor Party is ill conceived and ill thought out and places Independents and others who want to put their hand up in a very difficult situation. They have to decide how much money they can spend, given that now they will have to achieve 4 per cent of the vote. In my electorate that would be at least a couple of thousand votes. This move is regrettable and again exposes the two major parties. I will not be supporting the amendment.

MR MOORE (Minister for Health, Housing and Community Services) (9.49): Quite a number of political commentators I have heard over the years have said that it is very respectable for somebody who stands for election to pull some 300 personal votes. That is a very respectable figure. Most people who stand for election pull some 160 personal votes. It can go much lower than that, but it averages something of that order.

I am sure all members have had somebody approach them and say, "I want to run. How do I go about it?" You can give them some clues. Perhaps sometimes you give them too many. I say to them, "When you are doing your funding, estimate the number of votes you think you can get. Then work out what the return will be from the Electoral Commission for those votes. Remember that you have to get 2 per cent of the vote. Work that out and you will have a good idea of the amount of money you should be spending on your campaign. If you have other money to put in, do it. But that lets you run. That gives you a reasonable chance to make a prediction on what you are going to do and gives you a chance to run."

You are removing that possibility. The numbers Ms Tucker quoted are really sobering. I am glad the Chief Minister is here. He should reconsider this very inequitable move. Hare-Clark is about letting ordinary people have a go, and public funding is about ensuring that people do it.

Why did he put 2 per cent in when we originally worked on this legislation? I referred to you, Mr Humphries, because you were so involved, as Ms Follett and I were, in dealing with the first Electoral Act. We worked so hard on it. We put the 2 per cent in for a reason. I now think it was a mistake, because people now want to change it to 4 per cent. We put it in as an administrative convenience. The administrative cost in paying $30 or $40 to somebody who got 30 or 40 votes was not worth it. I think we made a poor decision at that time.

If I had realised it would lead to somebody moving to put the threshold up, it would have been much better for the Electoral Commissioner to have to write out a cheque for a dollar to a person who got only their own vote. It is very sad that we are here this evening trying to put up what Mr Kaine has correctly described as another hurdle. We have to ask ourselves why.

This is not about protecting public money. We are talking of probably $10,000 to $15,000. It is not about the public purse. Mr Humphries, a prominent person who has been elected to the Assembly many times, got only 2.45 per cent himself, although some of his personal vote would have gone to Mrs Carnell, because of the way they ran their campaign. To get 4 per cent of the primary vote is a very significant challenge for anybody. By this move you are cutting off from public funding almost everybody other than those in a main party and maybe four or five people with a very high profile. You should reconsider this amendment, Mr Stanhope. I cannot understand your thinking in eliminating public support for everybody other than the major parties and a handful of other prominent people.

MR RUGENDYKE (9.54): Once again, the deal has been done. The vote will be 10:5 on this. This is another example of how souls have been sold to get the cash cow. Once again Mr Kim Beazley has it right. The federal Labor leader, Kim Beazley, said the

Commonwealth laws had flaws and faults. We are once again replicating those flaws. This is not on the recommendation of the Electoral Commissioner.

Mr Kaine: This is not a flaw; it is a major boo-boo.

MR RUGENDYKE: Yes. Kim Beazley had it right. It is not too late, Bill.

MR STEFANIAK (Minister for Education and Attorney-General) (9.55): When the Liberal Party indicated it would be supporting some of Mr Stanhope's amendments and vice versa, we did so on the basis of consistency with what occurs federally and in every other state and territory. I can remember a time not all that long ago when no-one got electoral funding. Maybe that is a preferable thing. Why should the public refund anyone for money spent on electoral campaigns. Conversely—Mr Moore raised a good point—why on earth should everyone not get funding, even if you have to send out cheques for as little as a dollar? That may well be a better thing down the track. But at present every other state and territory has 4 per cent.

I do not think this is going to stop anyone standing for election. I wonder how many people who stand for election say, "I cannot do that, because I might get only 1, 2 or 3 per cent, and I will not get enough money back." Does that stop people standing for election? I do not think so. In this house, the major parties spend a hell of a lot more than they get back. Mr Osborne's group spent a lot less on their campaign. You wrote a press release about it, didn't you? You got back a lot more money than you spent. Good on you. That is great. I cannot think of too many people who have said, "We are not going to stand for election, because, oh dear, we might not get any money back." This is about consistency. I think that is important in a matter like this. There is no reason why we should not be consistent with the rest of Australia.

MR MOORE (Minister for Health, Housing and Community Services) (9.57): I table for circulation an amendment to Mr Stanhope's amendment No 3. It will omit 4 per cent wherever it appears and insert 0 per cent. That will be a much fairer way to go.

MR DEPUTY SPEAKER: That will have other implications, Mr Moore.

MR MOORE: It will have other implications, Mr Deputy Speaker. It will mean that the eligible votes cast in a candidate's favour will have to be at least 0 per cent. In other words, anybody who stands will be able to get funding from the Electoral Commission. It is a bit inconvenient for the Electoral Commission when somebody has only one or two votes, but a cheque for $2 going out is not a disaster compared to what we have here. Mr Stefaniak said that he will consider it. If you consider it, let us be sensible about it and let us get a reasonable outcome, a much better outcome than we see here.

MR DEPUTY SPEAKER: Mr Moore, you are effectively moving three amendments here, because there are other implications. You will need leave to do that.

MR MOORE: I seek leave to move my amendment.

Leave granted.

MR MOORE: I move the amendment circulated in my name *[see schedule 8, part 5, at page 1995]*. This gives us a chance to think about what we are doing. Ms Tucker's rather sobering figures drew attention to what we are talking about. One of the things we may have missed in a comparison with either state or House of Representatives electorates is that in those electorates it is not uncommon for somebody to get 4 per cent of the vote, because you do not have seven positions or five positions in the one electorate. We have a huge number of people standing, whereas only five or six people, sometime more, stand for a House of Representatives seat.

We should either leave the 2 per cent, or better still, accept Mr Stefaniak's offer and to go with the 0 per cent.

Mr Stefaniak: Try consistency with the Commonwealth.

MR MOORE: Mr Stefaniak raises consistency with the Commonwealth.

Mr Stefaniak: And the states.

MR MOORE: And the states, but not Tasmania, where they have a Hare-Clark system. You do not want to be consistent with Tasmania, do you, Mr Stefaniak? No, that is another story entirely. You are looking at consistency with an inconsistent system because it is convenient to make it harder for others.

The consistency argument has come up a number of times. That is why, Mr Stefaniak, I had on my desk the party political returns you quoted before. The argument has been that we must be consistent with the Commonwealth, because it is too much work and much too expensive for us to do returns. We want to be able to do them the same as the Commonwealth.

I table the returns for both the Labor Party and the Liberal Party for the last year. One is five pages and one is seven pages. One has eight entries on one page and about 15 on the other. One of the pages is one that it will not be necessary to use. I present the following papers:

> Elections ACT—Copies of Political Party or Independent MLA Annual Returns for the period 1/7/97 to 30/6/98 for:
>
> Australian Labor Party—ACT Branch, dated 19 October 2000.
>
> Liberal Party of Australia—
> ACT Division (Appendix C), dated 10 October 1998.
> ACT Division, dated 16 October 2000.

Mr Osborne: It must have taken them all of 10 minutes.

MR MOORE: It may have taken at least 10 minutes. If they are successful with their amendments, they will remove the need to declare the expenditure. That will remove another half. What they are worried will be so expensive, time consuming and administratively difficult is something that has just a handful of entries.

This is how they justify wanting consistency with the Commonwealth. It is so hard and so expensive to administer that they have not even had to open an Excel spreadsheet. You normally put these things on an Excel spreadsheet, then when it comes time to do it you push the button, print it off and send it to the Electoral Commission. That would be too much time and effort compared to writing it out by hand. That is how strong your argument is. It is absolutely pathetic.

The documents I have tabled put to shame the argument that both parties have been putting publicly. They ought to be extraordinarily embarrassed.

MS TUCKER (10.03): I am speaking to Mr Moore's amendment. I understand what he is saying and what he is trying to do. It is a bit of a stunt. I would not want to support it. There is an ability to make a profit. Mr Osborne, I understand, did make some profit, even at 2 per cent. That is very unusual. If you take it to 0 per cent, the capacity to make a profit will be much greater.

I understand from the commissioner that at this point you do not have to justify what you get back for what you spent for the campaign.

Mr Rugendyke: Where is my cut?

MS TUCKER: Mr Rugendyke wants a cut. You can sort that out later, boys.

I am as offended as Mr Moore is by what Labor and Liberal are doing here tonight, but I cannot in good conscience support what Mr Moore is doing. It needs more work. I understand the point he is making, but I wanted to explain why I cannot support it.

MR MOORE (Minister for Health, Housing and Community Services) (10.05): Ms Tucker is right. My recollection of the act is that you do have to justify the thing. The commissioner assures me that that is not the case, so I seek leave to withdraw the amendment.

Leave granted.

Amendment, by leave, withdrawn.

Question put:

> That proposed new clause 25A be inserted in the bill.

The Assembly voted—

Ayes 10		Noes 5
Mr Berry	Mr Quinlan	Mr Kaine
Mrs Burke	Mr Smyth	Mr Moore
Mr Corbell	Mr Stanhope	Mr Osborne
Mr Cornwell	Mr Stefaniak	Mr Rugendyke
Mr Humphries	Mr Wood	Ms Tucker

Question so resolved in the affirmative.

Proposed new clauses 25A and 25B.

MR STEFANIAK (Minister for Education and Attorney-General) (10.08): I move that proposed new clauses 25A and 25B, as circulated in my name in amendment 2, be inserted in the bill *[see schedule 4, part 1, at page 1981]*.

Proposed new clause 25A corrects a drafting error in section 217 relating to disclosure of gifts by candidates that currently requires details of amounts and dates of gifts below $200 to be declared, even though the identities of the donors of the gifts of less than $200 do not have to be disclosed. The amendment provides that details of amounts and dates of gifts below $200 do not have to be separately listed.

The new clause 25B corrects a drafting error in section 218 that relates to disclosure of gifts by non-party groups that currently requires details of amounts and dates of gifts below $200 to be declared, even though the identities of the donors of gifts of less than $200 do not have to be disclosed. The amendment provides that details of amounts and dates of gifts below $200 do not have to be separately listed.

Proposed new clauses 25A and 25B agreed to.

Clauses 26 to 28, by leave, taken together and agreed to.

Clause 29.

MR STEFANIAK (Minister for Education and Attorney-General) (10.10): I move amendment No 3 circulated in my name *[see schedule 4, part 1, at page 1981]*.

The amendments made by substituting new clauses 29, 29A and 29B are intended to amend the disclosure provisions to bring the ACT disclosure scheme into line with the Commonwealth scheme, as the two schemes are currently out of step.

Existing clause 29 in the bill is omitted and a series of new clauses substituted. One effect of this change is to retain existing sections 231A and 231C unchanged. Under the bill as it stands, these two sections will be omitted. These sections permit parties registered at the Commonwealth and ACT levels to fulfil their ACT obligations by giving the ACT Electoral Commissioner a copy of their Commonwealth returns and permit associated entities to do the same.

New clause 29 provides for annual returns by parties, ballot groups and MLAs. The substantive changes being made to section 230 by this amendment are to provide that parties, ballot groups and MLAs may submit an annual return as constituted by their audited annual accounts in a form approved by the Electoral Commissioner.

Details related to accounts paid by a party, ballot group or MLA to a person do not have to be disclosed. Annual returns submitted by parties, ballot groups and MLAs will not need to identify gifts that are not receipts or state the purpose for which the amount was received, and the changes contained in the bill delaying by four weeks the due dates for receipt of annual returns during an election year have been removed to

maintain consistency with Commonwealth due dates. No substantive changes are made to section 231 other than those made by the original bill.

New clause 29A provides for annual returns by associated entities. The substantive changes being made to section 231B by this amendment are to provide that details relating to amounts paid by an associated entity to a person do not have to be disclosed. Annual returns submitted by associated entities will not need to identify gifts that are not receipts or state the purpose for which the amount was received, and the changes contained in the bill delaying by four weeks the due date for receipt of annual returns during an election year have been removed to maintain consistency with the Commonwealth due dates.

New clause 29B substitutes a new section 232, "Amounts received". The substantive changes being made to section 232 by this amendment are to provide that individual amounts of less than $1,500 do not have to be taken into account when determining whether the identity of the person giving amounts to a party, ballot group, MLA or associated entity has to be disclosed and to require details about the origins of loans to be disclosed along the lines of requirements set out in the Commonwealth Electoral Act.

New clause 29B also omits section 233. This section currently provides that specified details related to accounts paid by a party, ballot group, MLA or associated entity to a person have to be disclosed. These details are no longer required under the Commonwealth disclosure scheme.

MR MOORE (Minister for Health, Housing and Community Services) (10.14): I move amendment 1 on sheet A, as circulated in my name, to Mr Stefaniak's amendment No 3 *[see schedule 8, part 1, at page 1992]*.

A combination of my amendments 1, 4 and 6 effectively reinserts sections of the act. This will ensure that we impose an obligation on parties to provide details of expenditure. They are trying to get out of providing details of their expenditure. We have to prevent the repeal of section 233.

I put these amendments on sheet A to show that they are all dependent on one another. We are attempting to remove from the act section 233, which requires parties to reveal their expenditure. For some reason they do not want to reveal their expenditure. This is on the expenditure side of things, not on the receipt side of things.

In the returns I tabled earlier the amounts paid would have required a huge amount of work—in the case of the Liberal Party, 15 to 18.

Mr Humphries: Are there two pages of those?

MR MOORE: No, just one page.

Mr Humphries: Anything on the previous page?

MR MOORE: For payments, there is nothing on the previous page. There might have been two pages in an election year. There would have been double the amount of work in an election year. That is the sort of work that I know drives political parties crazy because of the administration involved. The Greens can manage it. They are not objecting to it, and they are much smaller than the other two parties, with fewer resources. They must have people able to slave for days to prepare these sorts of things. I did not ask for copies of the Greens' returns, because when I looked at them before they were so boring. Besides, the Greens are not the ones claiming that they want to be consistent with the federal scheme.

There is no reason not to give details of expenditure. Why are they trying to hide their expenditure? Why are they trying to make it secret, the very thing they argue against in this place all the time?

MR RUGENDYKE (10.17): I have mentioned Mr Beazley often enough, and he is again correct on this one. This scandal is worse than the one I thought could not be bettered. This is it, isn't it, Mr Moore?

Mr Moore: No. We have more coming.

MR RUGENDYKE: Is there worse still to come?

Mr Moore: There is still worse to come. This is the expenditure side.

MR RUGENDYKE: I am sure that if you were to ask the Electoral Commissioner to come up with something diametrically opposed to what he would recommend, this would be it. The amendments of the Attorney-General would be it.

Mr Osborne: He would not, surely! It could not happen!

MR RUGENDYKE: The Attorney-General has done it. If you were to ask the Electoral Commissioner to produce something diametrically opposed to what this is, there it is in the original bill, the bill we are amending.

It is a scandal. As Mr Moore says, what are they trying to hide? Do not come to me in future when you want to talk about openness, accountability and integrity. Do not bleat to me about openness and accountability. This is outrageous, and the community will see it for what it is.

MS TUCKER (10.19): The Greens will be supporting this amendment. It puts back into the bill the provisions in the act that required parties, MLAs and associated entities to disclose amounts paid by them during the financial year. They were kept in the bill but then removed in the government's amendment. This requirement is part of the broader public disclosure requirements that currently apply to parties and associated entities so that public confidence in the fairness of our electoral system can be maintained.

I spoke at length about my concerns and the Greens' concerns about what the government and the Labor Party are doing here. I will not repeat myself but just say that I am appalled that the major parties are seeking to reduce public disclosure

requirements. For that reason I will support Mr Moore's amendment, even though it is obviously not going to win.

MR MOORE (Minister for Health, Housing and Community Services) (10.20): Whilst we are asking parties, MLAs and associated entities to declare what they have spent their money on, we are doing it for figures above $500. It is a sensible thing. We are not saying that every time somebody uses petty cash to buy Coke, bread or something along those lines for workers they have to declare that. It is specifically about amounts above $500.

Mr Stefaniak, you did not recognise that this was part of your own amendments, judging by your reaction, as I read it in the media. It might be time to say, "We probably made a mistake. This can stay in and I will support my friend Mr Moore's wonderful amendment."

Question put:

> That **Mr Moore's** amendment to **Mr Stefaniak's** amendment be agreed to.

The Assembly voted—

Ayes 5	Noes 10	
Mr Kaine	Mr Berry	Mr Quinlan
Mr Moore	Mrs Burke	Mr Smyth
Mr Osborne	Mr Corbell	Mr Stanhope
Mr Rugendyke	Mr Cornwell	Mr Stefaniak
Ms Tucker	Mr Humphries	Mr Wood

Question so resolved in the negative.

Amendment negatived.

MR STANHOPE (Leader of the Opposition) (10.25): I move the amendment circulated in my name to Mr Stefaniak's amendment No 3 *[see schedule 6, part 2, at page 1991]*. I do not believe that the Liberal Party will be supporting this amendment; so, for it to pass, it will require the support of the Independents. Having regard to the nature of the debate tonight, I know that I will get it.

This amendment reinstates a provision that was removed by a retrospective amendment to the Electoral Act last year. It reinserts into the act the requirements in relation to annual returns by parties and MLAs. As members will recall, the return which each MLA provides must state the amount received by or on behalf of the party, ballot groups or MLA during the financial year, together with the particulars required under section 232 (1) of the amounts received. My amendment is to proposed section 230 (3). The bill provides in subsection 2 (a) that an amount is received by or on behalf of an MLA only if the amount is a gift received by the MLA in his or her capacity as an MLA. My amendment removes that subsection and replaces it with a provision that we had last year before the retrospective amendment removed it, so that all MLAs in this place, all of us, would be required to disclose all of our income from whatever source.

Having regard to the high standards, the height of the bar that has been set and advocated here tonight, I know that each of the Independents will support the Labor Party in this amendment. They have no option but to support it, having regard to the very fine speeches that we have heard tonight in relation to the need for openness and accountability and the right of all to know everything about each of us. I know that each of you will be only too willing to support a Labor proposal that each of us declare all sources of all our income. I commend this amendment. I think the Liberal Party has indicated that it will not support it. I am looking for the support of Independents and I am sure that I will receive it.

MR STEFANIAK (Minister for Education and Attorney-General) (10.27): Mr Stanhope is quite right: the Liberal Party will not be supporting the amendment, which would reverse the amendment made to the disclosure scheme last year to limit the disclosure of income that is required of MLAs. The effect of the amendment would be to require all MLAs to disclose all sources of income other than personal gifts which have been made to the MLA in a private capacity and which have not been used, and will not be used, for a purpose related to his or her position as an MLA.

Under this amendment, all MLAs would be required to disclose income from salary, investments, bank accounts, property, all sources of employment and so on. This disclosure obligation used to be included in the Electoral Act as it applied to Independent MLAs before the amendment made last year, although the breadth of this provision was unintended and it was not enforced. This amendment reduces the disclosure obligation of Independent MLAs to a requirement only to disclose gifts received by an MLA in his or her capacity as an MLA. It was considered that the pre-2000 provisions were unduly onerous and intrusive, particularly as they applied only to Independent MLAs, not to all MLAs. The Electoral Amendment Bill 2001 extends the disclosure entitlements currently imposed on Independent MLAs to all MLAs, but does not change what income has to be disclosed, that is, only gifts received in an official capacity have to be disclosed. We will be opposing Mr Stanhope's amendment.

MR MOORE (Minister for Health, Housing and Community Services) (10.28): Mr Stanhope implies that you never have to declare these gifts anywhere. In fact, that is not what it is about. When you become an MLA you are required to provide to the Speaker a declaration of your personal interests, and that is accessible. That is the correct place to have it. I have to say that I have no personal interest here, because this place is my only source of income, apart from very small amounts of interest occasionally when my accounts go into the black. They are contained in our declarations of interest, which a member of the public can go and look at. Being intrusive in regard to family incomes and other sources beyond that is not the role of the Electoral Commissioner. It is a role here for the Clerk. For Mr Stanhope to stand there in a self-righteous way and run things in the fashion that he has is entirely inappropriate because the declaration has already been made in the appropriate place.

MR RUGENDYKE (10.31): Mr Stanhope's amendment is contrary to the advice of the Electoral Commissioner. The Electoral Commissioner gave a very well argued view that it was not in the public interest to have this degree of disclosure. Public interest is an interesting thing. I suppose Mr Stanhope will be able to tell us the public

interest point of view as to the lowering of the bar for donations in relation to the debate we just had on proposed sections 230 and 231. I am satisfied with the advice of the Electoral Commissioner. I will tell you why. I would be quite embarrassed to tell the world how little I have in assets. I have no savings, I have no shares and I have no business interests. I would be embarrassed to tell the world how poor I am, so I will not support this amendment.

MS TUCKER (10.32): That is an interesting argument. This amendment returns the Electoral Act basically to the wording used before the act was amended in September last year. The act was amended then because the wording was confusing and required the Independent MLAs to disclose all their income, whereas the original intention was that the disclosure only include gifts given to the MLAs for political purposes.

The amendment today is basically the same as the one the ALP tried to put in the debate last year to extend the existing reporting requirements on Independent MLAs to all MLAs. At the time I did not support that amendment because I thought there needed to be a more comprehensive approach to the reporting of the pecuniary interests of MLAs. I went to the effort of preparing a private members bill to establish a statutory register of members' pecuniary interests, but was disappointed that this bill was not supported by either of the major parties. I still believe that that is the best approach and that the ALP's amendment was poorly conceived. It is, however, better than having no reporting of members' pecuniary interests, so I will support it in principle today.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Mr Stanhope's amendment to **Mr Stefaniak's** amendment negatived.

MR MOORE (Minister for Health, Housing and Community Services) (10.36): I move amendment 2 *[see schedule 8, part 2, at page 1993]* to Mr Stefaniak's amendment No 3. I hope that this amendment will be useful to the parties. In going through these sheets, I had my attention drawn to the fact that, as well as gifts, there is income from things like rent. For example, I think the Liberal Party has rent paid to it by a series of people who are in its premises. I think that ought to be put in a distinctive way, because it is not a gift; it is part of normal income from the assets of the party. I think this is a sensible amendment to assist in this annual return.

MS TUCKER (10.37): We will be supporting this amendment. It puts back into the bill subsections that were new insertions into the act. The aim of these subsections was to identify receipts that are not for gifts and the purpose for which the amount was received. That will enable the separation of payment for services from gifts. That was to overcome an anomaly in the existing act that made it difficult for the commissioner to identify entities that may have to submit donor returns. Again, it is disappointing that the government is seeking to reverse a good amendment that was in its original bill. I am happy to support this amendment.

MR RUGENDYKE (10.38): I, too, will be supporting Mr Moore's amendment. It is a very wise amendment.

MR STEFANIAK (Minister for Education and Attorney-General) (10.38): The government will not be. Apparently, this amendment will take us out of kilter again with Commonwealth practice, especially in terms of the returns. That is the advice I have got, so we will not be supporting the amendment.

MR MOORE (Minister for Health, Housing and Community Services) (10.39): I think Mr Stefaniak's comments are worthy of a response. Later, we will come to an amendment which would allow for what I would refer to as a slave clause. I think the concept is the same as Mr Stanhope rejected earlier about clause 9. The slave clause provides that it is good enough for the ACT for you to hand a submission to the Commonwealth Electoral Commission, no matter what the Commonwealth commissioner requires. To say now with regard to this amendment that it is inconsistent with the Commonwealth legislation is a bit silly because the other one, effectively, will override it anyway.

Mr Moore's amendment to **Mr Stefaniak's** amendment negatived.

MR MOORE (Minister for Health, Housing and Community Services) (10.40): I ask for leave to move amendment No 3 circulated in my name to Mr Stefaniak's amendment No 3.

Leave granted.

MR MOORE: I move amendment No 3 *[see schedule 8, part 2, at page 1993]* to Mr Stefaniak's amendment No 3. These sections provide parties and associated entities with the option of submitting a Commonwealth annual return in place of an ACT return. This is what I have referred to as the slave scheme. Earlier today, Mr Stanhope made a very good argument, a persuasive argument, that actually won my support and that of Mr Rugendyke—I think it was of Mr Kaine as well, but I cannot remember about Ms Tucker—on clause 9 when he said that it is silly for us to align ourselves with the Commonwealth when we do not know what its law is.

Mr Rugendyke: Kim Beazley said it as well.

MR MOORE: Mr Rugendyke holds up the front page of a newspaper to remind me about Mr Beazley pointing out the flaws and holes in the Commonwealth legislation. I think it is worth reminding members that there is a Commonwealth bill currently

before the Senate that changes the $1,500 mark to $5,000. If you agree with a slave scheme, you will have the advantage of going to $5,000. It might be knocked off and it might be that other things will be passed by the Commonwealth but, whatever it is, all that will happen is that the parties, instead of slaving at doing the huge amount of work that they have to do, spending hours upon hours, days upon days and weeks upon weeks, will be able to take the work where they have spent hours, days and weeks slaving on the Commonwealth return which requires a declaration of over $5,000 in gifts unless the loopholes apply and just hand it in.

To be consistent, Mr Stanhope has to support this amendment of mine to prevent us being slaves of Commonwealth legislation that can change at any time. No matter what it is, we would be handing over the power to the Commonwealth and just support its legislation, doing so at a time when Mr Beazley is saying that it has terrible flaws in it. I have to say that we are expecting the Labor Party to be consistent with the argument that was put by Mr Stanhope earlier today.

Question put:

> That **Mr Moore's** amendment to **Mr Stefaniak's** amendment be agreed to.

The Assembly voted—

Ayes 5	Noes 10	
Mr Kaine	Mr Berry	Mr Quinlan
Mr Moore	Mrs Burke	Mr Smyth
Mr Osborne	Mr Corbell	Mr Stanhope
Mr Rugendyke	Mr Cornwell	Mr Stefaniak
Ms Tucker	Mr Humphries	Mr Wood

Question so resolved in the negative.

Mr Moore's amendment to **Mr Stefaniak's** amendment negatived.

MR MOORE (Minister for Health, Housing and Community Services) (10.46): I ask for leave to move amendment No 6 circulated in my name to Mr Stefaniak's amendment No 3.

Leave granted.

MR MOORE: I move amendment No 6 *[see schedule 8, part 1, at page 1993]* to Mr Stefaniak's amendment No 3. In speaking to the amendment, I should draw members' attention to the fact that the other amendments that were on my sheet have now become redundant because they were consequential upon the original amendments that were lost. This is the last amendment that I will be moving in this regard. I use the opportunity to mention to members that I supported clause 9 because of an argument which Mr Stanhope put in the debate there and which I thought was persuasive about not having a slave clause to clause 10. Considering the fact that he has been inconsistent in his approach, I intend to seek the recall of clause 9 when we get to the end of this bill, which would mean the recall of clauses 9 and 10, in order to reverse my vote on them. I hope that the crossbench members will join me in that vote.

I am not prepared to support an inconsistent approach. The only reason that Mr Stanhope was persuasive then, and we will come back to it, was that he talked about consistency and not having a slave clause. I indicated to him then that we would expect him to show consistency. He has not done that, so we will come back to that.

Mr Rugendyke has asked me on a number of occasions whether we have gone beyond the worst of it with this bill and I have said, "No, it is getting worse." I think we have actually hit rock bottom here. This is the loophole amendment. The amendment here seeks to restore proper exception for small donations instead of having the loophole, so it is a good opportunity to speak about the loophole. It is interesting that we have a combining of Labor and Liberal here. I am not going to go on too long about it because I think we have done enough in the in-principle stage, but it is interesting that we cannot manage to look across the Pacific at the American system and realise that the fundamental issue that Americans are trying to deal with in terms of their electoral system is how they can prevent the parties being so strongly influenced by big money. That is one of the fundamentals that ordinary American people are speaking about.

I have to say with regard to this issue that I find it flabbergasting that people who are really interested in democracy do not take the opportunity they have to say that they are not prepared to build into the system something that could lead to that sort of thing. It is flabbergasting that one party can allow another party to do it.

Mr Berry: Why don't you just argue the merits of your case and stop attacking other people, Michael?

MR MOORE: Mr Berry asks why I am not arguing the merits of my case. I am talking about the fundamentals of democracy and drawing attention to what has happened to democracy in America and some of the great weaknesses there. The system there is still a democratic system and, therefore, is far better than many of the other systems in the world, but it has a great weakness. The great weakness is the influence that money has on the system. The argument that I am putting here is that we wish to learn from and avoid the mistakes of other places, Mr Berry.

The point that I am making here is that we have a democratic system that is amongst the best in the world. We have to make sure that we strengthen it, not weaken it. What we see before us is an attempt to weaken it and what I am trying to do is to reinforce that possibility and strengthen our system by pointing out that the very good legislation that currently exists will be undermined by any other approach.

Suspension of standing order 76

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

> That standing order 76 be suspended for the remainder of the sitting.

MR RUGENDYKE: (10.52): I was asking Mr Moore when we would see the worst of it with this bill. This is the culmination of the scandal. It is interesting that Mr Osborne and I cop a fair bit and are pilloried quite often in this place because we have certain views, but this experience tonight goes the other way. The two major parties here are

worthy candidates for being pilloried for the scam that has been played out here tonight. I think the slate is even on this one. Goodness me, we have said plenty—

Mr Quinlan: Yes, but not a lot.

MR RUGENDYKE: Only because you do not like to hear what is being said. You have hung your head in shame throughout the whole debate because of the lowering of the bar. Normally, when we talk about accountability and openness, we talk about raising the bar. On this occasion we have lowered it quite dramatically. Mr Moore is doing an honourable thing in trying to convince you of your error. It is mind-boggling that you have sold your soul on the silliest things. There is no more that can be said.

Question put:

> That **Mr Moore's** amendment to **Mr Stefaniak's** amendment be agreed to.

The Assembly voted—

Ayes 5	Noes 10	
Mr Kaine	Mr Berry	Mr Quinlan
Mr Moore	Mrs Burke	Mr Smyth
Mr Osborne	Mr Corbell	Mr Stanhope
Mr Rugendyke	Mr Cornwell	Mr Stefaniak
Ms Tucker	Mr Humphries	Mr Wood

Question so resolved in the negative.

Mr Moore's amendment to **Mr Stefaniak's** amendment negatived.

Question put:

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

The Assembly voted—

Ayes 10		Noes 5
Mr Berry	Mr Quinlan	Mr Kaine
Mrs Burke	Mr Smyth	Mr Moore
Mr Corbell	Mr Stanhope	Mr Osborne
Mr Cornwell	Mr Stefaniak	Mr Rugendyke
Mr Humphries	Mr Wood	Ms Tucker

Question so resolved in the affirmative.

Mr Stefaniak's amendment agreed to.

Clause 29, as amended, agreed to.

Clause 30 agreed to.

Clause 31.

MR STEFANIAK (Minister for Education and Attorney-General) (11.01): Mr Speaker, I move amendment No 4 circulated in my name *[see schedule 4, part 1, at page 1981]*. Clause 31 is being amended to remove the change made by the bill to section 243 of the act, delaying by four weeks the due date for the publication of annual returns during an election year. That is being done to maintain consistency with the Commonwealth due dates.

Amendment agreed to.

Clause 31, as amended, agreed to.

Clauses 32 to 34, by leave, taken together and agreed to.

Clause 35.

MR STEFANIAK (Minister for Education and Attorney-General) (11.02): Mr Speaker, I move amendment No 5 circulated in my name *[see schedule 4, part 1, at page 1981]*. Clause 35 is being amended simply to correct a drafting error.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (11.03): Mr Speaker, I move amendment No 6 circulated in my name *[see schedule 4, part 1, at page 1981]*. Clause 35 is also being amended to delay until 1 January 2002 the commencement of the new provision requiring material published by or on behalf of candidates, parties and ballot groups to include in authorisation statements the name of the candidate, party or group. This is a simple amendment because a lot of the material has been available already. I understand that the amendment has the support of most people.

MS TUCKER (11.04): On the contrary, it is not a simple amendment. It is about this government looking after itself, once again, and not taking into account the public interest. This amendment is delaying the introduction of the new requirements for the authorisation of election material until 1 January 2002.

This amendment requires material published on behalf of parties or candidates to state the name of the party or candidate in the authorisation. I understand that this amendment has arisen because the major parties are concerned that campaign material they have already printed does not comply with this new rule. This change does not seem to be a major imposition on candidates or parties, so I do not know why this requirement needs to be totally delayed until after the election. It is also the case that this bill has been in the public domain since it was tabled on 29 March, so the parties have had plenty of time to take note of this change to the authorisation rule.

This provision is actually about trying to tighten up the information that is being handed out because, as we know, in the past the major parties in particular have been guilty of putting out quite misleading material. I remember that at one election it was being done for Greens voters. I cannot remember whether it was being done by the Labor Party or the Liberal Party; it is much of a muchness in this situation. It was not the Greens' information and it was really misleading that they were handing it out to Greens voters. It was basically an attempt to get preferences from Green voters.

This provision is an important tightening up of what is going on. It is in the public interest. Once again, the government is just looking after itself. If it has not got itself better organised, that is too bad.

Mr Humphries: What about the opposition?

MS TUCKER: And the opposition, if they are supporting it, absolutely. I suppose they are.

MR MOORE (Minister for Health, Housing and Community Services) (11.05): I think Ms Tucker has handled it rather eloquently with that example. It was not just for Greens voters. I have seen it done for Democrat voters. I have seen it done in federal elections. I have seen it done for the run of people. Those sorts of publications are shonky enough because of the impression they create. Added to that, they will not even have to have at the bottom "authorised by Bill Stefaniak for the Liberal Party", if he had enough gall to do it and was mean, nasty and cruel enough to misrepresent the situation. I am sure he would not, but if he were involved he would at least have to identify who had authorised it and on behalf of which party. This amendment will remove that.

I can see one of the advisers shaking his head to indicate that that is not correct. I think I have the appropriate section, Mr Speaker. Yes, clause 35, proposed new subsections 292 (3) and (4). The original section 292 is about the dissemination of electoral matters and the authorisers and authors of it. The part that is being added here is that subsection (1) will apply to electoral matter published after 31 December 2000 and expire on 1 January 2002. Mr Speaker, it is about just managing that for the coming election. It is just shonky.

Amendment agreed to.

Clause 35, as amended, agreed to.

Clauses 36 to 39, by leave, taken together and agreed to.

Schedule.

MR STEFANIAK (Minister for Education and Attorney-General) (11.07): Mr Speaker, I move amendment No 7 circulated in my name *[see schedule 4, part 1, at page 1981]*. Mr Speaker, there is a proposed new amendment 1.1 (a) in schedule 1 which is intended to amend section 67 to give the Electoral Commissioner the power to request information required for the purpose of maintaining the electoral roll from bodies specified by regulation, subject to appropriate regulations being made. This will

allow the Electoral Commissioner to obtain information from utilities such as ActewAGL for use in keeping the electoral rolls up-to-date.

Amendment agreed to.

MR STANHOPE (Leader of the Opposition) (11.08): I move amendment No 4 circulated in my name *[see schedule 6, part 1, at page 1990]*. Mr Speaker, this amendment is consequent upon amendment No 1 that I moved. That amendment was amended by an amendment of Mr Stefaniak's. I understand that Mr Stefaniak proposes to include a similar amendment, which we will support.

MR STEFANIAK (Minister for Education and Attorney-General) (11.09): For consistency, I formally move a similar amendment to Mr Stanhope's amendment No 4 [*see schedule 4, part 4, at page 1987]*.

Mr Stefaniak's amendment agreed to.

Mr Stanhope's amendment, as amended, agreed to.

MR STANHOPE (Leader of the Opposition) (11.10): I move amendment No 5 circulated in my name *[see schedule 6, part 1, at page 1990]*. Similarly, Mr Speaker, this amendment is consequential upon the successful passage of amendment No 3 earlier in the evening.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (11.10): I formally ask for leave to move together amendment No 8 and amendment No 1 circulated in my name.

Leave granted.

MR STEFANIAK: I move amendment No 8 *[see schedule 4, part 1, at page 1981]* and amendment No 1 *[see schedule 4, part 2, at page 1987]* circulated in my name. Mr Speaker, the omission of amendment 1.69 in schedule 1 is consequential upon the amendment made at amendment No 3 to omit existing section 233.

MR MOORE (Minister for Health, Housing and Community Services) (11.11): Mr Speaker, the amendments are about the repeal of section 233, which talks about an amount of $1,500 or more and says that in calculating the sum an amount of less than $500 need not be counted. The amount of less than $500 now becomes less than $1,500. I believe I am correct in saying, Mr Speaker, that we are again back at the ugly loophole.

Amendments agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (11.12): Mr Speaker, I move amendment No 9 circulated in my name *[see schedule 4, part 1, at page 1981]*. This amendment is consequential upon the amendment being made by amendment No 3 to section 230 of the Electoral Act.

Amendment agreed to.

Schedule, as amended, agreed to.

Title agreed to.

Ordered that clauses 9 and 10 be reconsidered.

Clauses 9 and 10—reconsideration.

Ordered that the question be divided.

Clause 9.

MR BERRY (11.15): Mr Speaker, I sought to have the question divided on clauses 9 and 10 to draw attention to the reasons why they are being reconsidered. Mr Moore said that he was going to change his vote on this matter because he was upset with something that Mr Stanhope had done after he had supported a position. I find that extraordinary. If we are making policy on the basis of a personal difference with one of the people in this place, it is just extraordinary. Either Mr Moore supported what he voted for or he did not. I just do not understand how he can justify and rationalise a decision on the basis of how upset he is with a personality in this place.

Mr Moore may or may not have liked what the Labor Party did in respect of a certain matter, but he went the same way as we did in this matter for some time, doing so until we did something which so upset him that he decided to change his mind, not because he disagreed with the position he had adopted earlier. I think that is extraordinary. I am happy to consider the matter as I know which way it is going to go, but I wish to have that on the record.

MR MOORE (Minister for Health, Housing and Community Services) (11.16): Actually, Mr Speaker, it did not quite happen in that way, but Mr Berry always likes to put his spin on things. In fact, I said to Mr Rugendyke at the time, "Mr Stanhope has put a persuasive argument. I think that it is persuasive enough to carry the day, but is it persuasive enough on the most important issue, the issue of saying that you can just do whatever the Commonwealth does. If it is okay for the Commonwealth, you can hand it in. Therefore, effectively, you respond always to the Commonwealth legislation." I said to Mr Rugendyke that, if Mr Stanhope is being consistent, the very minor matter of clause 9 ought to be supported, but he was not consistent. When the most important matter came to hand, I drew that to his attention at the time. It was exactly the same argument. I could remain consistent only if he could remain consistent with the argument he had put about the persuasiveness of that. He was not consistent. If he does do not consider the argument to be strong enough, why should we go with Mr Stanhope on that argument. The persuasiveness that he put was lost by his actions.

MR STANHOPE (Leader of the Opposition) (11.17): I do need to respond. This is just a stunt by Mr Moore and I think that everybody here realises that that is what it is and that that is what it is all about. In fact, Mr Moore's logic in relation to this whole issue of what we did or did not do in relation to clause 9 is quite absurd. The logic that

he has applied to the so-called inconsistency between me or the Labor Party on this clause and any other clause is just illusory.

This clause, this provision, is about the Commonwealth Liberal government's determination to narrow the class of people who can witness an application for enrolment on the federal electoral roll, which is the roll that we utilise in the ACT. The Commonwealth has prepared regulations which are basically being blocked in the Senate. They are being blocked on the basis that the majority of senators refuse to accept them and the government has not assisted with them. This provision says that we will tie ourselves to the Commonwealth position whilst we do not know what it is. That is the difference, of course; we do not know what the Commonwealth's position is in relation to witnessing the electoral roll.

Mr Moore: It is exactly the same with the returns.

MR STANHOPE: It is not exactly the same. We know what the Commonwealth's position is in relation to all of the other matters that have been under discussion today.

Mr Moore: You do not.

MR STANHOPE: Yes, we do. We know precisely what it is. We do not know what it is going to be in this regard. If the regulations do get passed in the Senate, we can consider the position. That is the simple position that the Labor Party puts. As soon as the regulations are passed in whatever form they are passed, if there is any change to the witnessing requirements in relation to the federal electoral roll, in light of that knowledge, we will make a decision, or could make a decision. This is the only area that we have actually discussed or voted on tonight in which we do not know of the possible position in the future. Of course we know that regulations have been made and we know the federal government's position. At the moment, we are utilising the Commonwealth electoral roll because we know the requirements in relation to the Commonwealth electoral roll, and we are quite satisfied with them.

MR MOORE (Minister for Health, Housing and Community Services) (11.20): Mr Speaker, if Mr Stanhope had been here during the other part of the debate he would have realised that he is in the process, inadvertently, of misleading the house, because we know that, just as the matter that he speaks about in relation to clause 9 is before the federal Senate, so is the question of whether you allow for $1,500 donations or $5,000 donations. That is the scheme to which he has committed himself later in terms of the slave system. That is before the Senate in exactly the same way. We do not know what the outcome is going to be. Nevertheless, he has already committed himself to a much more important issue about the disclosure of financial things, so he is being inconsistent and what he is saying is simply incorrect.

MR BERRY (11.21): Mr Speaker, here we go again. Mr Stanhope explained truly the situation in relation to this matter. Mr Moore may not like it, but that is the situation in relation to that clause. We do not know what is the position in relation to the regulations. Mr Moore wants to change his vote now because he does not like something that the Labor Party did later. In particular, in foreshadowing that he was going to do so, he gave the alleged inconsistency of Mr Stanhope as the reason for changing his mind, not the issue of substance.

Mr Stanhope: It was a conditional vote.

MR BERRY: It was a conditional vote, depending on whether the Labor Party behaves itself or Mr Stanhope smiles and genuflects every time Mr Moore comes into the room. That is just a joke; Mr Moore just cannot have it that way. The issue was decided on principle in the first place. I do not mind revisiting things if people want to decide them on principle, but not just because they do not like the way somebody is holding their mouth.

Question put:

> That clause 9 be agreed to.

The Assembly voted—

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

Question so resolved in the affirmative

Clause 9 agreed to.

Clause 10 agreed to.

Question put:

> That this bill, as amended, be agreed to.

The Assembly voted—

Ayes 11		Noes 4
Mr Berry	Mr Quinlan	Mr Moore
Mrs Burke	Mr Smyth	Mr Osborne
Mr Corbell	Mr Stanhope	Mr Rugendyke
Mr Cornwell	Mr Stefaniak	Ms Tucker
Mr Humphries	Mr Wood	
Mr Kaine		

Question so resolved in the affirmative.

Bill, as amended, agreed to.

Electoral (Entrenched Provisions) Amendment Bill 2001

Debate resumed from 29 March 2001, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

MR SPEAKER: I wish to advise members that this bill is a proposed law to which the Proportional Representation (Hare-Clark) Entrenchment Act 1994 applies, by virtue of section 4 of that act. This bill, therefore, cannot take effect unless it is passed by at least a two-thirds majority of members of the Assembly or by a majority of members of the Assembly and a majority of electors at a referendum. I am sure you would all like to go to that.

Before putting the question that this bill be agreed to, I therefore direct that the bells be rung out and that there be a call of the Assembly, in accordance with standing orders 158 to 162.

Question put:

> That the Electoral (Entrenched Provisions) Amendment Bill 2001 be agreed to.

The Assembly voted—

Ayes, 15	Noes, 0
Mr Berry	Mr Quinlan
Mrs Burke	Mr Rugendyke
Mr Corbell	Mr Smyth
Mr Cornwell	Mr Stanhope
Mr Humphries	Mr Stefaniak
Mr Kaine	Ms Tucker
Mr Moore	Mr Wood
Mr Osborne	

Question so resolved in the affirmative, by the special majority required.

Bill agreed to.

Electoral Amendment Bill 2001 (No 2)

Debate resumed from 29 March 2001, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Financial Management Legislation Amendment Bill 2001
Detail stage

Debate resumed from 13 June 2001.

Bill, by leave, taken as a whole.

MR QUINLAN (11.35): I seek leave to move together the amendments circulated in my name.

Leave granted.

MR QUINLAN: I am moving these amendments *[see schedule 9 at page 1996]* because we are talking, in the bill, about empowering our administration to invest in derivatives for both the protection and the enhancement of investments. I fully subscribe to the desire to protect investors with such vehicles as hedging, although I am a little bit concerned about enhancement, which implies to some extent the possibility of speculation. We should remember that it was derivatives that gave the world the Barings Bank disaster. I would like to see the Financial Management Act expanded, not just through guidelines but by an actual provision in the act that makes sure we limit ourselves to protecting our investments by the use of derivatives as opposed to protecting and enhancing them.

I have discussed it off-line with the Treasurer and understand that guidelines will be coming forward between now and the winter recess. Once we have got hold of those, we will be happy to look at re-amending the act, if necessary, to do fancy things like index tracking. I am trying to learn about them really quickly, and I am sure the Treasurer is trying to do the same. I commend my amendments to the house.

MR KAINE (11.38): Mr Speaker, it is a pity in a way that this bill has come up in the detail stage and for final endorsement by the Assembly at this time of night, when people are tired, because I am not certain that most people in this place understand what this bill is about.

I agree with Mr Quinlan. I am not too sure if what the government has proposed here enhances anything, and I have great concerns about what is proposed here. It is proposed that this bill remove a prohibition of the use of financial derivative instruments for investment purposes. We have had a prohibition for nearly 10 years on investing public money in the form of derivatives and the like, and there has been good reason for that. When he tabled this, the Chief Minister said that we need it to assist in balancing risk and return objectives. He tells us that financial derivatives are an integral part of the funds management industry. That is true, but it is only true in certain limited and circumscribed circumstances, and the Chief Minister has not

chosen to tell us what those specific limited and circumscribed circumstances are where derivatives are used elsewhere.

I am not certain that we really need, or that it is desirable for us, to get into the group derivatives trading business. I said that not many people in this place would understand what it is really about. I guess that Mr Quinlan is probably the only person in this building at the moment who could tell you what forwards are, what futures are, what options are, what warrants are, what swaps are, what share ratios are and what other composites are. Those, the Chief Minister tells us, are transactions that are labelled, all taken together, as derivatives. Does anybody in this place even understand what they are? I would suggest Mr Quinlan could tell us, but I doubt that there is anybody else in this room at the moment who could tell us what they are.

The reason why trading in derivatives has been prohibited for the last 10 years is that, when you are trading in these things, you are trading at the very high risk end of investments. It is generally considered that this is inappropriate for public money because of the high risk involved.

I think it was Woody Allen who said that stockbrokers are people who take your money and trade in it until they have lost the lot. We hire people to trade in investments for us. If you let them get into derivatives they are pretty much like stockbrokers: they can lose the lot. If you let them trade in derivatives, they will lose it much more quickly because of the high risk.

The warning needs to be sounded. We have prohibited trading with public money in financial derivatives for 10 years, and for good reason. When the Chief Minister tells me that we now need to get into the trading of financial derivatives to assist in balancing risk and return objectives and that the members of the Finance and Investment Advisory Board have identified this as being "critical to improving the territory's investment processes", I am very dubious. I do not know how it will improve or why it is critical to improving the territory's investment processes that we get into very risky areas of investment in derivatives such as forwards, futures, options, warrants, swaps, share ratios and other composites, which none of us even begin to understand. Yet we are told that we have got to get into this very risky trading.

The other problem is that we are asked to trust the government. "Trust us," they say. "We will do all this in accordance with guidelines that have yet to be written." We do not even know yet what constraints the government intend to impose on our investors in this very risky area of investment. I say this because I think the warning needs to be sounded.

The investment market out there has its ups and downs at the best of times but, if you get into the field of derivatives, your ups and downs can be much greater and much more rapid. I am concerned about it, and I agree with Mr Quinlan that to argue that this will enhance our trading is certainly going too far. It is a high-risk area, and I support Mr Quinlan's amendment. I, too, would like to have seen in this bill a statement of the restrictions we are going to impose on our traders rather than wait until some future time when the government comes back and tells us what those restrictions are going to be.

I said that the government has said, "Trust us." If we pass this bill tonight, that is exactly what we are doing. We are trusting the government to put in place sufficiently rigid constraints on the traders—who will be trading our money out there in a very risky area of investment—to protect and, to use their word, "enhance" the product. I am not totally convinced that we can get that outcome. It is a concern to me that we are abandoning a 10-year long practice and no good reason has been put forward to tell us why we should do it.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (11.45): In light of the lateness of the hour, I am not going to speak several times on this amendment. I am going to make one pitch and, if I am not convincing in that space of time, I will give up.

I confess that I do not know the details of how derivatives work, either. They are extraordinarily complicated. They rely on someone projecting what the value of a particular asset might be in the future and taking calculated risks based on what they expect that value to be. I confess to that, and I hope there are people in the building who know more about this than Mr Quinlan or I do. My Treasury advisers are sitting out there. They know all about it, so I hope that what Mr Kaine said is not exactly true.

However, I am not moving for the government to have the option of using derivatives because I read about it in a magazine and I think it is a good idea. We have used a very careful and thorough process to make this decision, which has led us quite inexorably and firmly to this point.

Members will recall that, some time ago, we commissioned Mr Bernie Fraser to conduct a review of ACT investment strategies and he recommended that we should establish an investment advisory board. We appointed an investment advisory board last year. It consists of three eminent figures in the Australian investment scene. I do not have the names of those people here, but members have seen those names before. The Finance and Investment Advisory Board has very strongly advised the government to include the use of derivatives in its range of investment strategies because it is now a widely accepted and commonly used form in Australia of investment.

Mr Kaine said that derivatives are generally considered to be unsafe, but the ACT government is the only government in Australia that does not use derivatives in its investment strategy—the only government.

Mr Kaine: We haven't had any money to risk—that's why.

MR HUMPHRIES: Actually, we have lots of money; we have over $1 billion worth of investments. We have plenty of money to invest. Furthermore, 86 per cent of superannuation funds use derivatives to protect their assets. Of course it is risky, but all investments, other than putting money into a bank, are risky.

Mr Berry: Which bank? It all depends which bank.

MR HUMPHRIES: Well, even some banks have been considered risky in the past, if that is an indication. It is for that reason that we need to have access to derivatives and, by passing this bill in principle—which you have already done—members can be assumed to agree that we do need to have derivatives.

This amendment is not about derivatives. It is about the definition of derivatives and the question of whether we use the word "enhancements"—whether we allow derivatives to be used to protect or enhance the ACT's investment. This is a semantic argument. If we use a derivative to shore up the value of our investments, are we protecting those investments, or are we enhancing those investments? That is a semantic question.

Mr Kaine: I do not think you're doing either, frankly.

MR HUMPHRIES: That may be the case, Mr Kaine, but my belief is that we ought to take the advice of people who have expertise in these areas.

The Labor Party actually moved to allow the use of derivatives a few years ago, and it was because of concerns raised at the time by you, Mr Kaine, specifically, that it was not proceeded with. We have since got advice that we should use derivatives—very high-quality advice—which was what was suggested at that time that we do. That is what we are trying to do now.

Do we use the word "enhancements", or do we just use the word "protect"? Do we just protect our assets, or do we protect and enhance our assets? I would argue that there is a very fine line between those two things, and we will make an impossible position for the officers making day-to-day decisions about these things if we tell them they can protect assets but not enhance them. I cite in support of that point of view divine authority. Let me read a passage from scripture which very convincingly gives us an indication of what we should do on this matter. I will read from Matthew 25:

> For it will be as when a man going on a journey called his servants and entrusted to them his property; to one he gave five talents, to another two, to another one, to each according to his ability. Then he went away. He who had received the five talents went at once and traded with them; and he made five talents more. So also, he who had the two talents made two talents more. But he who had received the one talent went and dug in the ground and hid his master's money. Now after a long time the master of those servants came and settled accounts with them. And he who had received the five talents came forward, bringing five talents more, saying, 'Master, you delivered to me five talents; here I have made five talents more.' His master said to him, 'Well done, good and faithful servant; you have been faithful over a little, I will set you over much; enter into the joy of your master.' And he also who had the two talents came forward, saying, 'Master, you delivered to me two talents; here I have made two talents more.' His master said to him, 'Well done, good and faithful servant; you have been faithful over a little, I will set you over much; enter into the joy of your master.' He also who had received the one talent came forward, saying, 'Master, I knew you to be a hard man, reaping where you did not sow, and gathering where did you not winnow; so I was afraid, and I went and hid your talent in the ground. Here you have what is yours.' But his master answered him, 'You wicked and slothful servant! You knew that I reap where I have not sowed, and gather where I have not winnowed?

> Then you ought to have invested my money with the bankers, and at my coming I should have received what was my own with interest. So take the talent from him, and give it to him who has the ten talents. For to every one who has will more be given, and he will have abundance; but from him who has not, even what he has will be taken away. And cast the worthless servant into the outer darkness; there men will weep and gnash their teeth.'

The question here is: does the ACT community expect us to protect our assets by putting them safely in the ground, making sure that they are not increased or decreased but protecting them, or does it expect us to increase the assets, to multiply the assets? I suspect that our masters, the ACT community, will be more 'joyful', to quote scripture, if we increase and enhance those investments. For that reason we ought, I would submit, to reject Mr Quinlan's amendment.

MS TUCKER (11.54): After listening to that, I have to say you have just lost my vote. Sorry.

Mr Humphries: Did I ever have it, Kerrie?

MS TUCKER: I have heard the Treasurer and Chief Minister tell me he does not know what derivatives are, and then he reads me the Bible. I am really worried. I did support this in principle; I did expect something much more substantial than that. In the original speech, I said I was concerned about this legislation.

Mr Humphries: It was in the original speech.

MS TUCKER: Yes, but in my original speech I said again that I was concerned about this. This is not a good form of investment anyway; it is short-term speculation; it is not a productive form of investment. In that speech I raised the question of ethical investment. I also mentioned the fact that, when the public accounts committee looked at this some years ago, they said that there should be a limit of 5 per cent of investments being placed into derivatives. We do not see that; we do not see the detail of the regulation. I am not comfortable supporting this.

MR RUGENDYKE (11.55): This bill does demand a lot of scrutiny. I also do not claim to know what derivatives are, but I have had a very good briefing from Treasury officials. I will convey some of the things that I think I learnt at that time, and I will be corrected if I have it wrong.

Yes, there is a degree of risk in derivatives trading. It is not our departments that do this work; it is work done by experts in the field: the National Australia Bank, Bankers Trust and some of those who specialise in the area of investment. They are financial dealings that are totally separate from the government. We give those organisations about five per cent of the money that can be put into this type of investment. I do not believe that to give them that five per cent, with shackles, is appropriate.

Mr Humphries: Shackles?

MR RUGENDYKE: Yes, 'shackles', figuratively speaking. The reason Mr Leeson spent time in the Singapore jail was that there was no control over him. He sent the Barings Bank broke because there was no one looking over his shoulder to say, "Hang

on. You can't do that. You're investing more than the asset base of the bank is." When the bank collapsed, that is why he ended up in jail. My understanding is that there are those checks and balances. Funds managers do not allow cowboy investors to overstep the mark.

We seem to be doing this slightly back to front in that we have not seen the guidelines but we are asked to pass the legislation. I would be much more comfortable seeing the guidelines, which are a disallowable instrument, before any of these derivatives are used. An assurance has been given by government that this bill will not be enacted until we have seen the guidelines and until we have had a chance to disallow them, if necessary. So yes, there is a reason to be cautious; there is an element of risk.

The amendment about the word 'enhancement' has also been explained to me: you cannot determine what part of it is protection and what part of it is enhancement, and to try and separate the two is difficult. If we were to take out "enhancement" it would mean that the funds managers are stuck with tracking the top 200. This is called 'index tracking', which is based on the investments made by the top 200 successful companies on the stock exchange. We track how they are going. I think that 'enhancement'—I will be corrected if I am wrong—means that the guidelines can say, for example, 'index tracking' plus a couple of per cent to give us an edge, to give us a little bit more. Yes, there is a degree of risk, and we have got to be cautious.

Mr Quinlan: There's a high degree of risk. If the experts didn't tell you that, they failed in their brief.

MR RUGENDYKE: Yes, I was told there is a degree of risk, but it has also been advised by the committee—Mr Bernie Fraser and others. On balance, I am prepared to give it a go, subject to the guidelines being sufficiently strong that our assets are protected and enhanced. If I am wrong, tell me.

Saturday, 16 June 2001

MR QUINLAN (12.02 am): I am not sure over what period the good and faithful servants doubled their master's money in the biblical parable. If they did it in a short space of time, I do not want them handling our money. Doubling your money in investments usually implies a high degree of risk. If it was just over a year or so—had five, got seven now—that would do; that is good. But I would be asking: 'What are you doing?'

Mr Humphries: Usary was rife in those days.

MR QUINLAN: Yes. I am really only standing to say that my understanding of derivatives has already been overstated in this place by others. Please rest assured that I do not know a whole lot about futures, forwards, options or swaps. I do understand that you can use derivatives in a mix to reduce the risk of the portfolio, and I recommend you to be damned careful. I can remember standing in this place a year or two ago saying, "Don't sell Actew and turn it into cash because, when you turn it into cash, you're going to be playing in exactly this puddle." It would have been far better to get the whole utility returning a nice solid dividend every year.

I recommend to the house that they seriously consider these amendments.

Amendments negatived.

Bill, as a whole, agreed to.

Bill agreed to.

Government agency annual reports—reporting dates

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.04 am): I move:

> That the Assembly:
>
> notes the provisions for tabling of annual reports under the *Annual Reports (Government Agencies) Act 1995* and audited annual financial statements of the Territory under the *Financial Management Act 1996* would result in these documents not being available before the last scheduled sitting day of this Assembly; and
> agrees that the annual reports and audited financial statements of the Territory for 2000-2001 be provided by portfolio Ministers to Members before the 20 October 2001 Assembly election, with a target date of 28 September 2001 for annual reports and 5 October 2001 for the audited annual financial statements of the Territory.

The motion, which appears on the notice paper in my name, is fairly self-explanatory. There has already been discussion in this place about the need to ensure that there is a capacity for annual reports to be available to members in reasonable time prior to the election on 20 October. It necessitates some change in the usual procedure to allow that to occur. My motion will provide that it is possible for those annual reports to be produced by a date in September and for them to be produced out of session—that is, not to be tabled in the Legislative Assembly before they are made public. By doing so, members will have the chance to see the documents; indeed, the documents will be presented under privilege, which is the purpose of this motion. On the assumption that there is no opposition to this, I leave those remarks as the support for this motion.

Question resolved in the affirmative.

Waste Minimisation Bill 2001

Debate resumed from 3 May 2001, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

MR CORBELL (12.06 am): Mr Speaker, earlier in the week we debated a proposal from Ms Tucker to have recyclable implements and utensils for eat-in food. At the time I indicated that the Labor Party would not be supporting that proposal because we believed a more comprehensive approach was enclosed within this particular bill. So it

will come as no surprise to members that the Labor Party will be supporting this legislation.

The Waste Minimisation Bill 2001, from our perspective, does provide a comprehensive framework for developing and implementing strategies and other mechanisms to reduce waste, in particular, through the implementation of industry waste reduction plans. In some respects it is a bit of an anomaly that the ACT is only now introducing this Waste Minimisation Bill and the capacity for industry waste reduction plans. Legislation of this sort has been in place now for a number of years in some of the larger jurisdictions, particularly New South Wales, Victoria and Queensland. Those jurisdictions have already progressed a considerable way in the introduction of industry specific waste reduction plans to deal with a variety of waste dregs.

It is probably fair to add that those jurisdictions often deal with a lot more waste generated through industrial activity or other large-scale manufacturing activity. That is not so much of a factor here in the territory. Nevertheless, the ACT has at least put in place this comprehensive framework, which we are only now considering with this bill today. That said, we welcome the legislation. It is important legislation that provides for a range of mechanisms and, more importantly, it is a legislative framework that provides for addressing the issue of waste generated from various sources.

The Labor Party particularly welcomes the definition of environmental sustainability as outlined at the beginning of the bill. The principles of ecologically sustainable development are well spelt out in the legislation, and it is important that those are there. The other useful aspect of the bill from our perspective is that it provides for an updating of a series of regulations and the capacity to make regulations, which previously sat in rather old and outdated pieces of legislation, particularly the Building and Services Act. I understand that there is some sort of rubbish regulation as well, which allows the minister to set the size of bins and other interesting provisions like that, which is clearly—

Mr Rugendyke: Make them bigger, make them bigger.

MR CORBELL: Let's not have a big bin debate, Dave; that has been done. But that no longer really forms a necessary part of our waste legislation.

This is valuable legislation, and I am particularly pleased to see that the government has already commenced work on industry waste reduction plans for some elements of packaging. Once this bill is passed, I would like to see the government progress more rapidly towards the implementation of other industry waste reduction plans, particularly in the building and construction industry, which is our major generator of waste, as well as in a range of other industries in the territory. The Labor Party will be supporting this legislation.

MS TUCKER (12.10 am): This bill has two parts. The first part relates to the introduction of industry waste reduction plans, in particular an industry waste reduction plan for the packaging industry. In 1999, the National Environment Protection Council and the Australia and New Zealand Environment and Conservation

Council agreed to the National Packaging Covenant and the National Environment Protection Measure, NEPM, for used packaging materials.

The covenant is a voluntary agreement by industry players in the packaging chain that they will take various actions to reduce the packaging waste they generate. The establishment of NEPM protects covenant signatories from competitive disadvantage by setting out a regulatory scheme for industry players who choose not to sign up to the covenant. Part of this agreement is the requirement for all states and territories to legislate for industry waste reduction plans in their own jurisdiction so that companies who do not want to sign up to the covenant cannot avoid being bound by the NEPM.

This is obviously a good move; we would all agree that there is a need to reduce waste from packaging. However, this part of the legislation will probably have limited practical impact in the ACT, as none of the brand owners covered by the NEPM are based in the ACT and most packaged products that are sold in shops here would have been packaged at their place of manufacture outside the ACT. Nevertheless, it is important to establish this enabling legislation that will allow the industry waste reduction plans to be implemented in the ACT where necessary.

I also note that we will now be eligible to access up to $280,000 as the ACT's share of funding for waste minimisation projects that is being provided by industry as part of their commitment under the packaging covenant. The second part contains provisions for the management of the territory's garbage collection services and the setting of fees and charges for the disposal of waste. These provisions have been transferred from the Building and Services Act and the garbage regulations, which are being repealed on 30 June 2001 as part of the utilities legislation package.

These provisions are pretty standard, although they allow for persons who are authorised to undertake regulatory activities not to be public servants. The Liberal government has adopted this approach in other legislation as part of its ideological commitment to outsourcing government services. I have already raised in the Assembly my view that regulatory functions of government should be undertaken by public servants and not be outsourced to private operators. In the briefing on this bill I received from officials, I was told that there was no intention to outsource these activities in the waste area at present, but I want to put on the record my concerns about this.

In response to Mr Corbell, I will refer to GEO 2000, which is the UNEP overview of major global trends. I have a real concern that people seem to think we have got a lot of time in this. We do not; we need to be acting urgently. I put up legislation such as I did yesterday to get change happening more quickly. In describing major global trends, the United Nations environment program confirms that economic trends are still outpacing environmental repair and conservation. For example, if present consumption patterns continue, two out of every three persons on earth will live in water-stressed conditions by the year 2025.

That is about packaging; that is about consumption; that is about life on earth. This is 2025 we are talking about; it is not something we have got much time on. We actually have a crisis.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (12.15 am), in reply: Mr Speaker, I thank the Assembly for their support for this bill. Although many of the firms involved have joined the voluntary National Packaging Covenant, it is important that we have mechanisms behind the covenant to ensure that those who do not do the right thing voluntarily can be pushed to make them comply. It is an important bill. It becomes very important in our drive for the No Waste by 2010 strategy, and it will help us achieve the next steps towards that goal. I thank the Assembly for their support and commend the bill to the house.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Postponement of orders of the day

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

> That Executive business orders of the day Nos 7 to 9 be postponed until the next day of sitting.

First Home Owner Grant Amendment Bill 2001

Debate resumed from 3 May 2001, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

MR QUINLAN (12.16 am): We will happily support this bill. I will just make a couple of comments. I am a little concerned that this extra $7,000 will really only follow on from previous disturbances in the housing market. There was the GST pull-forward, followed by the necessary $7,000 pull-forward. Then Mr Howard found that the trough was getting nearer anyway, so he threw another $7,000 on top of it in order to keep economic indicators okay until December—and it at all fades out in December.

Mr Moore: Is that the reason?

MR QUINLAN: Yes. Just as an aside, I can recall reading the tabled dissenting report by Mrs Burke and Mr Hird in relation to the estimates committee on the pull-forward of housing demand by these devices. They wrote, in a quite surprisingly erudite fashion, that I had a fundamental misunderstanding of the whole picture. I suggest that they go talk to the HIA. I have had discussions with the chief economist of the national office of the HIA. They are certainly concerned about, and have statistics to back up, the fact that this process is a pull-forward. Let's hope that the trough is a low, slow trough rather than a bit of a dip. We support the bill.

Take out some hedging on it. Get a housing derivative or something.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.18 am), in reply: I thank Mr Quinlan for his support of this. It is quite important that a grant be available to first home owners in the ACT, and I am very glad that the passage of legislation has been

facilitated.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Rates and Land Tax Amendment Bill 2001

Debate resumed from 3 May 2001, on motion by **Mr Humphries**:

> That this bill be agreed to in principle.

MR QUINLAN (12.19 am): We will also support this bill. I would like to give my little speech about inequity, particularly with the fixed charge.

Mr Moore: Consider it done.

MR QUINLAN: Yes, I will consider it done. There has been a 60 or 70 per cent increase in that over the last four or five years. I refer you to the *Hansard* of this time last year and the year before.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.19 am), in reply: I thank Mr Quinlan for his support for this bill. He can take it as read that I will give my speech about the $344 million operating loss. We are about equal on that front.

Mr Quinlan: Yes, righto. I don't know how that fits in. But, anyway, you can knock yourself out.

MR HUMPHRIES: It always fits in.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Adjournment

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

> That the Assembly do now adjourn.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (12.20 am): Mr Speaker, I am sorry to speak on the adjournment at this hour. I will be quite brief.

Mr Moore: No, feel free. Take your time.

MR HUMPHRIES: Thanks, yes.

Mr Quinlan: Make it bloody good.

MR HUMPHRIES: It will be good, and it will be quick. Very recently, Senator Margaret Reid celebrated the twentieth anniversary of her election as a senator for the ACT. Today there was a celebration of that fact, which I was not able to attend because of the sitting of the Assembly.

I want to put on the record the government's appreciation of Senator Reid's service over the last 20 years. It is unusual to have service of that length, particularly given that the service in the Senate for the ACT entails election every time there is an election for the House of Representatives. Senator Reid has probably faced more elections as a senator than any other member of that body. Her endurance over that time is a testament to her tenacity and her dedication to the city she serves. I think we would all acknowledge, no matter what party we come from, that she has worked very hard on behalf of the citizens of this city, and I think it is appropriate that we should celebrate this anniversary of hers. I know that it is not always easy to be a Liberal, particularly a federal Liberal, in the ACT, and Senator Reid has had to walk a very fine line on many occasions. Her continuing presence in the Senate is an indication of how well she has done.

MR MOORE (Minister for Health, Housing and Community Services) (12.22 am), in reply: Mr Speaker, I am going to make some comments. I just want to indicate that that closes the debate.

MR SPEAKER: I think it probably will. I do not know that anybody else is speaking.

MR MOORE: At 7.30 this evening, when we returned to the debate on the electoral bill, we heard a number of speeches that could be described as little other than bilious. I would like to comment on those speeches and say they reflect much more on the people who made them than they do on the people they were accusing.

Question resolved in the affirmative.

Assembly adjourned at 12.22 am (Saturday) until Tuesday, 19 June, at 10.30 am

Schedules of amendments

Schedule 1

COURT SECURITY BILL 2000

Amendments circulated by Attorney-General

PART 1—Attorney-General

1
Clause 5
Paragraph (1) (b)
Page 2, line 18—

Omit the paragraph, substitute the following paragraph:

(b) the person complies with all the requirements made under this Act by a security officer; and

2
Clause 5
Paragraph (2) (j)
Page 3, line 9—

Omit the paragraph.

3
Clause 8
Subclause (3)
Page 4, line 14—

Omit the subclause, substitute the following subclause:

(3) If a security officer makes a requirement of a person under this section, the person must immediately comply with the requirement or leave the premises.

Maximum penalty: 5 penalty units.

4
Clause 9
Paragraph (2) (b)
Page 5, line 14—

Omit the paragraph, substitute the following paragraph:

(b) if a security officer of the same sex as the person being searched is not available to conduct the search—by a public servant of the same sex who is employed at a court and who agrees to conduct the frisk search when asked by a security officer.

5

6

7
Clause 10
Page 6, line 1—

Omit the clause.

8
Clause 11
Subclause (1)
Page 6, line 20—

Omit "has in contravention of section 10", substitute "is carrying or otherwise has in his or her possession".

9
Clause 11
Subclause (2)
Page 6, line 22—

Omit the subclause.

10
Clause 17
Proposed new paragraph (3) (ca)
Page 10, line 3—

After paragraph (c), insert the following new paragraph:

(ca) the person is not capable of competently exercising the functions of a security officer under this Act; or

PART 2—Attorney-General's amendment to Mr Rugendyke's amendments

Amendment 4

Omit "(2) to (7)", substitute "(2) and (5) to (7)".

Schedule 2

COURT SECURITY BILL 2000

Amendments circulated by Leader of the Opposition

PART 1—Leader of Opposition

1
Clause 5
Subclause (1) (b) and (c)
Page 2, line 18—

Omit the paragraphs, substitute the following paragraphs:

(b) the person complies with the appropriate security guidelines; and

(c) there is room for the person in that area of the premises.

2
Proposed new clauses 6A to 6D
Page 3, line 17—

After clause 6, insert the following new clauses:

6A Court security agreements

(1) The relevant authority for a court may, on behalf of the Territory, enter into an agreement with a person (the contractor) for the provision by the contractor of security services for the court.

(2) The agreement must provide for—

(a) compliance by the contractor (and the contractor's employees) with all relevant provisions of this Act and every other Territory Act; and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including security guidelines (see Interpretation Act 1967, s 55A).

(b) objectives and performance standards in relation to the provision of services under the contract; and

(c) the fees, costs and charges to be paid to the contractor; and

(d) the submission of periodic reports by the contractor to the relevant authority in relation to the contractor's operations under the agreement; and

(e) provide for an indemnity by the contractor of the Territory, the Minister, the relevant authority and the court; and

(f) the position the occupant of which is to be the principal officer for the application of the Freedom of Information Act 1989 to the contractor; and

(g) the position the occupant of which is to be the principal officer for the application of the Ombudsman Act 1989 to the contractor; and

(h) anything else prescribed under the regulations.

(3) Subsection (2) does not limit the matters that may be provided in the agreement.

6B Application of Freedom of Information Act

The Freedom of Information Act 1989 applies to a contractor in the contractor's capacity as a provider of security services under a court security agreement as if—

(a) the contractor were a prescribed authority within the meaning of that Act; and

(b) the holder of the position stated in the agreement for the application of that Act to the contractor were the principal officer of that prescribed authority; and

(c) the Minister were the responsible Minister of that prescribed authority; and

(d) the persons employed by the contractor were officers of that prescribed authority.

6C Application of the Ombudsman Act

The Ombudsman Act 1989 applies to a contractor in the contractor's capacity as a provider of security services under a court security agreement as if—

(a) the contractor were a prescribed authority within the meaning of that Act; and

(b) the holder of the position stated in the agreement for the application of that Act to the contractor were the principal officer of that prescribed authority; and

(c) the Minister were the responsible Minister of that prescribed authority; and

(d) the persons employed by the contractor were officers of that prescribed authority.

6D Exercise of powers of security officer under Act

(1) A security officer may only exercise a power under this Act—

(a) in accordance with the appropriate security guidelines; and

(b) if a security officer is employed for a court security agreement—in accordance with the objectives and performance standards provided for in the agreement.

(2) In exercising a power under this Act, a security officer must act in accordance with any direction given by a judge or magistrate.

3
Clause 8
Page 4, line 4—

Omit the clause, substitute the following clause

8 Person may be required to state name etc.

(1) If a security officer believes on reasonable grounds that a person entering or on court premises is behaving unlawfully, is behaving in a disorderly or menacing way or is a threat to court security, the security officer may require the person to tell the officer—

(a) the person's name; and

(b) the person's reason for entering or being on the premises.

(2) A person must not, without reasonable excuse, fail to tell a security officer the person's name, or the person's reason for entering or being on the court premises, when required to do so under subsection (1).

Maximum penalty: 5 penalty units.

(3) A person must not give a name, or other information, that is false or misleading in a material particular in purported compliance with a requirement under subsection (1).

Maximum penalty: 20 penalty units.

4
Clause 10
Paragraph (2) (b)
Page 6, line 8—

Omit the paragraph, substitute the following paragraph:

(b) a security officer in relation to a firearm, explosive or offensive weapon seized under section 11 (Seizure and forfeiture of firearms etc; or

5
Clause 13
Subclauses (2) and (3)
Page 7, line 13—

Omit the subclauses, substitute the following subclause:

(2) However, the security officer may make the requirement only with the leave of the relevant court or if the person continues to behave unlawfully, or in a disorderly or menacing way, after being warned by the officer.

6
Clause 14
Subclause (1)
Page 7, line 27—

Omit "and address"

7
Clause 14
Proposed new paragraph (3) (d)
Page 8, line 10—

After paragraph (3) (c), insert the following new paragraph:

(d) the person is accompanying a person mentioned in paragraph (a) to (c).

8
Clause 17
Subclause (1)
Page 9, line 15—

Omit the subclause, substitute the following subclause:

(1) The relevant authority of a court may appoint a person (other than a police officer or sheriff's officer), who is a contractor or is employed by a contractor, to be a security officer for a court security agreement made between the contractor and the relevant authority.

Note Each police officer and sheriff's officer is a security officer.

9
Clause 17
Subclause (2)
Page 9, line 18—

Omit "chief executive", substitute "relevant authority of a court"

10
Clause 17
Subclause (3)
Page 9, line 26—

Omit the subclause, substitute the following subclause:

(3) The relevant authority of a court may revoke the appointment of a security officer appointed for a court security agreement by the relevant authority if—

(a) the security officer ceases to be registered as an employee under the industry code; or

(b) if the security officer is the contractor under the agreement—the security officer ceases to be registered as a principal under the industry code; or

(c) if the security officer is employed by the contractor—the security officer ceases to be employed by the contractor under the agreement; or

(d) the security officer commits an offence against this Act or has been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; or

(e) the security officer is not capable of competently exercising the functions of a security officer under this Act; or

(f) the contract ends and is not renewed or extended; or

(g) the contractor or the contractor's employees do not comply with the performance standards of the contract or any other provision of the contract; or

(h) the relevant authority and the security officer agree to the revocation.

11
Clause 19
Page 11, line 5—

Omit the clause, substitute the following clauses:

19 Security guidelines

The relevant authority of a court may, in writing, issue security guidelines for the court.

19A Delegation of functions

The relevant authority of a court may, in writing, delegate to the registrar of the court (or, if there is no registrar, a person prescribed under the regulations) all or any of the relevant authority's functions under this Act.

12
Dictionary
Proposed new definition of appropriate security guidelines
Page 12, line 1—

Insert the following new definition:

appropriate security guidelines, in relation to a court, means the security guidelines made under section 19 (Security guidelines) by the relevant authority of the court.

13
Dictionary
Proposed new definition of associated court or tribunal
Page 12, line 3—

Insert the following new definition:

associated court or tribunal, in relation to the Magistrates Court, means a court or tribunal mentioned in the definition of court, paragraphs (c) to (k).

14
Dictionary
Proposed new definition of contractor
Page 12, line 3—

Insert the following new definition:

contractor, in relation to a court security agreement made by the relevant authority of a court, means the person with whom the agreement is entered into by the relevant authority.

15
Dictionary
Proposed new definition of court security agreement
Page 13, line 2—

Insert the following new definition:

court security agreement means an agreement under section 6A (Court security agreements).

16
Dictionary
Proposed new definition of relevant authority
Page 13, line 25—

Insert the following new definition:

relevant authority means—

(a) for the Supreme Court—the Chief Justice; or

(b) for the Magistrates Court or an associated court or tribunal—the Chief Magistrate; or

(c) for any other court—the entity prescribed under the regulations.

PART 2—Leader of Opposition

1
Dictionary
Proposed new definition of dangerous weapon
Page 13, line 4—

Insert the following new definition:

dangerous weapon means—

(a) a firearm; or

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

or

(c) any other spear gun.

2
Dictionary
Definition of offensive weapon
Page 13, line 20—

Omit the definition, substitute the following definition:

offensive weapon means—

(a) a dangerous weapon; or

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

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

PART 3—Leader of the Opposition

Clause 13

Page 7, line 21

Proposed new paragraph (3) (d).

After paragraph (3) (c) insert the following new paragraph:

(d) the person accompanying a person mentioned in paragraph (a) to (c).

Schedule 3

COURT SECURITY BILL 2000

Amendments circulated by Mr Rugendyke

1
Clause 8
Page 4, line 4—

[Oppose the clause.]

2
Clause 9
Paragraph (1) (a)
Page 5, line 4—

Omit “or a frisk search”.

3
Clause 9
Paragraph (1) (d)
Page 5, line 8—

Omit the paragraph.

4
Clause 9
Subclauses (2) to (7)
Page 5, line 12—

Omit the subclauses.

5
Clause 14
Subclause (1)
Page 7, line 27—

Omit “8 (Person may be required to state name and address etc),”.

6
Dictionary
Definition of frisk search
Page 13, line 10—

Omit the definition.

Schedule 4

ELECTORAL AMENDMENT BILL 2001

Amendments circulated by Attorney-General

PART 1—Attorney-General

1
Clause 4
Page 2, line 9—

Omit the clause, substitute the following clause:

4 Additional amendments

(1) Schedule 1A amends the Legislation (Consequential Amendments) Act 2001.

(2) Schedule 2 amends the Referendum (Machinery Provisions) Act 1994.

2
Proposed new clauses 25A and 25B
Page 26, line 15—

After clause 25, insert the following new clauses:

25A Disclosure of gifts
Section 217 (3)

substitute

(3) However, the reporting agent is not required to specify the information mentioned in subsection (2) (c) to (e) for a gift by a person if the amount of the gift and sum of all other gifts made to the candidate by the person is less than $200.

25B Disclosure of gifts—non-party groups
Section 218 (3)

substitute

(3) However, the reporting agent is not required to specify the information mentioned in subsection (2) (c) to (e) for a gift by a person if the amount of the gift and sum of all other gifts made to the non-party group by the person is less than $200.

3

4

5
Clause 29
Page 33, line 10—

Omit the clause, substitute the following clauses:

29 Sections 230 and 231

substitute

230 Annual returns by parties, ballot groups and MLAs

(1) The reporting agent of a party, ballot group or MLA must, within 16 weeks after the end of each financial year, give the commissioner a return—

(a) that is in an approved form; or

(b) that is in the form of the audited annual accounts of the party, ballot group or MLA, in a form that is approved by the commissioner.

(2) The return must state—

(a) the amount received by, or on behalf of, the party, ballot group or MLA during the financial year, together with the particulars required by section 232 (1) (Amounts received); and

(b) the amount paid by, or on behalf of, the party, ballot group or MLA during the financial year; and

(c) the outstanding amount, at the end of the financial year, of debts incurred by, or on behalf of, the party, ballot group or MLA, together with the particulars required by section 234 (1) (Outstanding amounts).

(3) For subsection (2) (a), an amount is received by, or on behalf of, an MLA only if the amount is a gift received by the MLA in his or her capacity as an MLA.

Examples of amounts not required to be stated in a return

1 Income derived in a private capacity eg interest on bank accounts and dividends on shares.

2 Salary, allowances and other benefits (including superannuation benefits) as an MLA.

3 A gift given to the MLA in a private capacity for his or her personal use eg a birthday gift from a family member.

(4) For subsection (2) (b) or (c), an amount paid, or an outstanding amount of debts incurred, by or on behalf of an MLA includes an amount paid, or an outstanding amount of debts incurred, by or on behalf of the MLA for a purpose that relates solely or substantially to his or her position as MLA on any of the following:

(a) broadcasting an advertisement;

(b) publishing an advertisement in a newspaper or periodical;

(c) displaying an advertisement at a theatre or another place of entertainment;

(d) producing an advertisement mentioned in paragraphs (a) to (c);

(e) producing any printed electoral matter to which section 292 (Dissemination of electoral matter—authorisers and authors) applies;

(f) producing and distributing electoral matter that is addressed to particular people or organisations;

(g) consultant's or advertising agent's fees for services provided;

(h) carrying out an opinion poll or other research.

(5) A return under this section must not include a list of the members of a party.

(6) If the registration of a party or ballot group is cancelled during a financial year, this section applies to the party or ballot group in relation to the year as if a reference to the reporting agent of the party or ballot group were a reference to the person who was the reporting agent of the party or ballot group immediately before the cancellation.

(7) If a person ceases to be an MLA during a financial year, this section applies to the person in relation to the year as if the person were the reporting agent.

231 Periods of less than financial year

(1) This section applies if, during a financial year—

(a) a political party becomes, or ceases to be, a registered party; or

(b) a ballot group is registered or a registered ballot group ceases to be registered; or

(c) a person becomes, or ceases to be, an MLA.

(2) A return under section 230 (Annual returns by parties, ballot groups and MLAs) for the political party, ballot group or person for the financial year need only include particulars for the part of the year when the party or ballot group was registered or the person was an MLA.

29A Section 231B

substitute

231B Annual returns by associated entities

(1) If an entity is an associated entity at any time during a financial year, the entity's financial controller must give the commissioner a return in the approved form within 16 weeks after the end of the financial year.

(2) The return must state—

(a) the amount received by, or on behalf of, the entity during the financial year, together with the particulars required by subsection 232 (1) (Amounts received); and

(b) the amount paid by, or on behalf of, the entity during the financial year; and

(c) if the entity is an associated entity at the end of the financial year—the outstanding amount, at the end of the year, of debts incurred by, or on behalf of, the entity, together with the particulars required by subsection 234 (2) (Outstanding amounts).

(3) An amount received when the entity was not an associated entity is not to be counted for subsection (2) (a) and (b).

(4) If an amount required to be stated under subsection (2) (b) was—

(a) paid to or for the benefit of 1 or more parties, ballot groups or MLAs; and

(b) paid out of funds generated from capital of the entity;

the return must set out the required details of each person who contributed to that capital on or after 29 November 1996.

(5) For subsection (4), the required details of a person are—

(a) the person's name and address; and

(b) the total of the person's contributions to the capital of the associated entity mentioned in that subsection up to the end of the financial year.

(6) Subsection (5) does not apply to contributions that have been included in a previous return under this section.

29B Sections 232 and 233

substitute

232 Amounts received

(1) If the sum of all amounts received by, or on behalf of, a party, ballot group, MLA or associated entity (the receiver) from a person or organisation during a financial year is $1 500 or more, the return by the receiver under section 230 (Annual returns by parties, ballot groups and MLAs) or section 231B (Annual returns by associated

entities) must state the amount of the sum and set out the defined particulars for it.

(2) In working out the sum, an amount of less than $1 500 need not be counted.

(3) If the sum was received as a loan, the return must state the information required by section 218A (2) (Certain loans not to be received).

6
Clause 31
Proposed new subsection 243 (3)
Page 42, line 18—

Omit the subsection, substitute the following subsection:

(3) A copy of a return under section 221A or division 6 must be made available for public inspection from the beginning of February in the next year.

7
Clause 35
Proposed new paragraph 292 (1) (a)
Page 44, line 11—

Omit "or" (last mention), substitute "and".

8
Clause 35
Proposed new subsections 292 (3) and (4)
Page 44, line 22—

After subsection (2), insert the following new subsections:

(3) Subsection (1) (b) applies to electoral matter published after 31 December 2001.

(4) This subsection and subsection (3) expire on 1 January 2002.

9
Schedule 1
Proposed new amendment 1.11A
Page 50, line 5—

After amendment 1.11, insert the following new amendment:

[1.11A] Section 67 (1) (b)

after

authority

insert

or of an entity prescribed under the regulations

10

11

12
Schedule 1
Amendment 1.69
Page 61, line 14—

Omit the amendment.

13
Proposed new schedule 1A
Page 75, line 12—

After schedule 1, insert the following new schedule:

Schedule 1A Amendments of Legislation (Consequential Amendments) Act 2001

[1A.1] Schedule 1, part 120, amendment 1.1346

omit

[1A.2] Schedule 1, part 120, amendments 1.1378 and 1.1379

substitute

[1.1378] Section 230 (1)

substitute

(1) The reporting agent of a party, ballot group or MLA must, within 16 weeks after the end of each financial year, give the commissioner a return.

Note If a form is approved under s 340A (Approved forms) for a return under this section, the form must be used.

(1A) However, the return may be the audited annual accounts of the party, ballot group or MLA in a form approved, in writing, by the commissioner.

(1B) The approval is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act 2001.

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the Electoral Amendment Act 2001, whichever is later)

[1.1379] Section 230

renumber subsections when Act next republished under Legislation Act 2001

(commencement: the commencement of section 3 of this Act or immediately after the commencement of the Electoral Amendment Act 2001, whichever is later)

PART 2—Attorney-General

Amendment circulated by Attorney-General

Schedule 1
Amendment 1.70

Page 61, line 22—
Omit the amendment.

PART 3—Attorney-General

Amendment circulated by Attorney-General to Mr Stanhope's amendment No 1

Clause 13
Proposed new paragraph 105 (2) (c)
Page 20, line 11

Omit "50", substitute "20".

PART 4—Attorney-General

Amendment circulated by Attorney-General to Mr Stanhope's amendment No 4

Schedule 1
Proposed new amendment 1.15A – Section 105 (4) (g)
Page 50, line 17

Omit "50", substitute "20".

Schedule 5

ELECTORAL AMENDMENT BILL 2001

Amendments circulated by Ms Tucker

14
Clause 12
Proposed paragraph 93 (1) (a)
Page 10, line 8—

Omit the paragraph, substitute the following paragraph:

(a) the commissioner believes on reasonable grounds that the party or group does not have at least 100 members who are electors; or

15
Clause 12
Proposed section 97A
Page 15, line 26—

Omit the section, substitute the following section:

97A Information about political parties or ballot groups

The commissioner may, by written notice given to the registered officer of a registered political party or registered ballot group, require the officer to give to the commissioner information stated in the notice that is reasonably necessary for the commissioner to find out whether the party or group is entitled to be registered.

16
Clause 12
Proposed paragraphs 98 (6) (a) and (b)
Page 16, line 22—

Omit the paragraphs, substitute the following paragraphs:

(a) for a registered party—

(i) the party has ceased to exist (whether by amalgamation with another political party or otherwise); or

(ii) the party does not have a constitution; or

(b) the party or group does not have at least 100 members who are electors; or

(c) the registration of the party or group was obtained by fraud or misrepresentation.

17

18

19
Clause 15
Proposed section 110 (2)
Page 20, line 24—

Omit the subsection and the examples, substitute the following subsections:

(2) The commissioner must also reject the nomination of a person if satisfied on reasonable grounds that the name under which the person is nominated is obscene.

(2A) The commissioner may reject the nomination of a person if the person's name includes all or part of the name of—

(a) a registered party; or

(b) a political party registered or recognised for the law of the Commonwealth or a State that relates to the election of members of the Commonwealth Parliament or the State legislature; or

(c) a registered ballot group; or

(d) the name of another candidate whose nomination for election has not been rejected.

20
Clause 15
Proposed section 110 (3)
Page 21, line 7—

Omit "(1) or (2)", substitute "(1), (2) or (2A)".

21
Clause 15
Proposed section 110 (5)
Page 21, line 10—

Omit "(1) or (2)", substitute "(1), (2) or (2A)".

Schedule 6

ELECTORAL AMENDMENT BILL 2001

PART 1—Leader of the Opposition

Amendments circulated by Leader of the Opposition

22
Clause 13
Proposed new paragraph 105 (2) (c)
Page 20, line 11—

Omit "2", substitute "50".

23
Proposed new clause 19A
Page 24, line 7—

After clause 19, insert the following new clause:

19A New section 143

substitute

143 Application forms for postal declaration votes

An application form for declaration voting papers for postal voting may be physically attached to, or form part of, other written material issued by any person or organisation.

24
Proposed new clause 25A
Page 26, line 15—

After clause 25, insert the following new clause:

25A Section 208

substitute

208 Threshold

(1) A payment under this division may only be made for the votes cast for a candidate in an election if the number of eligible votes cast in the candidate's favour is at least 4% of the number of eligible votes cast in the election by the electors of the electorate for which the candidate was nominated.

(2) A payment under this division may only be made for the votes cast for a party or ballot group in an election by the electors of an electorate if the number of eligible votes cast in the party's or ballot group's favour is at least 4% of the number of eligible votes cast by those electors in that election.

(3) A payment under this division may only be made for the votes cast for a non-party group in an election by the electors of an electorate if the number of eligible votes cast in the group's favour is at least 4% of the number of eligible votes cast by those electors in that election.

4
Schedule 1
Proposed new amendment 1.15A
Page 50, line 17—

After amendment 1.15, insert the following new amendment:

[1.15A]Section 105 (4) (g)

omit

2

substitute

50

5
Schedule 1
Amendment 1.54
Page 58, line 14—

Omit the amendment.

PART 2—Leader of the Opposition

Amendments circulated by Leader of the Opposition to Government amendment 3

Government		amendment		3
Proposed	substituted	section	230	(3)

Page 4—

Omit proposed subsection 230 (3), substitute the following subsection:

(3) A reference in subsection (2) (a) to an amount received by, or on behalf of, an MLA does not include a reference to gifts given to the MLA in a private capacity, for the MLA's personal use, that the MLA has not used, and will not use, solely or substantially for a purpose related to his or her position as an MLA.

Schedule 8

ELECTORAL AMENDMENT BILL 2001

PART 1—Minister for Health, Housing and Community Services

Amendments circulated by Minister for Health, Housing and Community Services to amendment 3 to be moved by the Attorney-General

Retention of Section 233 of the Act (which imposes the obligation to provide details of expenditures)

1.

Government amendment 3

Proposed clause 29—substituted paragraph 230(2)(b)
Omit the paragraph, substitute the following:

(i) " (b) the amount paid by, or on behalf of, the party, ballot group or MLA during the financial year, together with the particulars required by section 233(1) (Amounts paid); and"

Note: this proposed paragraph is identical to that originally proposed in the Bill, Page 33, Line 20.

4.

Government amendment 3

Proposed clause 29A—substituted paragraph 231B(2)(b)
Omit the paragraph, substitute the following:

(ii) " (b) the amount paid by, or on behalf of, the entity during the financial year, together with the particulars required by section 233(1) (Amounts paid); and"

Note: this proposed paragraph is identical to that in the Bill, Page 36, Line 5.

6.

Government amendment 3

Proposed clause 29B—heading
Omit "Sections 232 and 233", substitute "Section 232".

Note: The effect of this change is to prevent the repeal of section 233 of the Act.

Note: As part of these proposed amendments, Government amendment 8 should be opposed.

PART 2—Minister for Health, Housing and Community Services

Amendments circulated by Minister for Health, Housing and Community Services to amendment 3 to be moved by the Attorney-General

Requirement to inform Commissioner of the distinction between gifts and other income

---

2.

Government amendment 3

Proposed clause 29—substituted section 230
Insert after subsection (5) the following additional subsection:

(iii) " (5A) A return under this section must identify the receipts that are not for gifts and the purpose for which the amount was received."

Note: this proposed subsection is identical (with one typographical correction) to the subsection (6) originally proposed in the Bill, Page 34, Line 30.

5.

Government amendment 3

Proposed clause 29A—substituted section 231B
Insert after subsection (6) the following additional subsection:

(iv) " (7) A return under this section must identify the receipts that are not for gifts and the purpose for which the amount was received."

Note: this proposed subsection is identical (with one typographical correction) to the subsection (7) originally proposed in the Bill, Page 36, Line 28.

PART 3—Minister for Health, Housing and Community Services

Amendments circulated by Minister for Health, Housing and Community Services to amendment 3 to be moved by the Attorney-General

Removal of Sections 231A and 231C of the Act, as proposed by the original Bill (these sections provide parties and associated entities with the option of submitting a Commonwealth Annual Return in place of an ACT Annual Return)

3.

Government amendment 3

Proposed clause 29A – heading

Omit "Section 231B", substitute "Sections 231A, 231B and 231C".

Note: the effect of this amendment is to omit sections 231A and 231C of the Act.

PART 4—Minister for Health, Housing and Community Services

Amendments circulated by Minister for Health, Housing and Community Services to amendment 3 to be moved by the Attorney-General

Replacement of the threshold for ignoring transactions that is proposed by the Attorney-General (all donations below $1,500) with the version recommended by the Commission and included in the original Bill (fundraising event donations below $100)

7.

Government amendment 3

Clause 29B – proposed new subsection 232(2)
Omit subsection (2), substitute the following:

"(2) In working out the sum, an amount of less than $100 received at a fundraising event need not be counted.

(2A) In this section:

fundraising event means any of the following:

(a) a breakfast, lunch or dinner;

(b) a morning tea, afternoon tea, barbecue or cocktail party;

(c) an auction (including a dutch auction);

(d) a raffle or lucky envelope sale;

(e) a game or quiz night;

(f) a tipping competition;

(g) a concert;

(h) a theatre party;

(i) a fair or fete;

(j) a conference or seminar;

(k) a tour or trip;

(l) a ball or dance;

(m) an art, craft or fashion exhibition;

(n) an event in which fund-raising participants are sponsored by someone else;

(o) any other event prescribed under the regulations."

Note: the proposed subsections are identical to subsection (2) and (3) originally proposed in the Bill, Page 37, Line 19

PART 5—Minister for Health, Housing and Community Services

Amendments circulated by Minister for Health, Housing and Community Services to amendment 3 to be moved by the Leader of the Opposition

Proposed new clause 25A

Page 26, line 15

208.

Omit "4%" wherever occurring

Substitute "0%".

Schedule 9

FINANCIAL MANAGEMENT LEGISLATION AMENDMENT BILL 2001

Amendments circulated by Mr Quinlan

Part 2,
Clause 4,
Section 3
Page 3, line 12 –
omit
"or enhancement"

Part 3,
Clause 10,
Page 5, line 10 –
omit
"or enhancement"

Answers to questions

The following answers to questions were provided but are unable to be included in Week 6 because of technical difficulties:

No 360
No 361
No 362
No 364
Nos 365 and 366
No 367
No 368
No 369

These answers to questions will be provided in the next Weekly once the technical difficulties have been resolved.