DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

10 December 2002

Tuesday, 10 December 2002

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MR SPEAKER (Mr Berry) took the chair at 10.30 am, made a formal recognition that the Assembly was meeting on the lands of the traditional owners and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

Offensive words

MR SPEAKER: Members, I note concerns raised by Mrs Dunne and her reference to the practice of the House of Representatives, which is based on that of the United Kingdom House of Commons. The situation was a difficult one, and possibly without precedent in this chamber. A range of very serious charges against a member had been made in a document by the then Leader of Opposition, a copy of which he tabled in the Assembly. The member who was the subject of the allegations was not present at the time.

These concerns were raised with me in the adjournment debate on Tuesday, 19 November. Mrs Dunne, in referring to the practice of the House of Representatives and the House of Commons, asked that I review the remarks made in the chamber earlier that day by Mrs Cross and rule on their appropriateness.

I was also asked to make a ruling on the device of making a statement in the circumstances which, in the opinion of Mrs Dunne, was to the disrepute of the house. Earlier that day Mrs Cross had been granted leave of the Assembly concerning, in broad terms, her former membership of the Liberal Party. In her statement, Mrs Cross referred to material widely circulated by Mr Humphries inside and outside the chamber.

Members will recall that on 24 September 2002, Mr Humphries, by leave, made a statement concerning Mrs Cross' position in the parliamentary Liberal Party. He also presented a copy of a letter from himself as Leader of the Opposition to Mrs Cross on the matter of her expulsion from the party. In that letter a number of serious charges were made concerning the behaviour of Mrs Cross. At that time I had expressed a caution about impugning a member, and later that day I informed the Assembly that, in the absence of an order of the Assembly authorising the publication of the letter, I would not be authorising its publication beyond members of the Assembly.

Mrs Cross, the subject of the charges made, appeared to have been deeply offended by them and sought an opportunity to respond in the Assembly on 19 November. Serious allegations had been made and the member responded in strong tones in the Assembly. I have to say that I would have preferred that neither occurrence had taken place—that is, the tabling of the allegations nor, in turn, the response.

As I stated above, I do note Mrs Dunne's concerns, both on the appropriateness of certain remarks made and the device of making them during a statement by leave. However, in view of the possible unique circumstances as outlined, I do not propose to go through the allegations point by point, nor do I propose to take any further action on the matter.

Emerging from this experience, I would ask members to be a little more aware in future of the possible repercussions of the tabling of documents in this place. I have raised these concerns before. I also ask that members, in the granting of leave to table papers, make themselves aware of the contents of the documents in question.

Leader of the Opposition

MR SPEAKER: Members, I have been advised that on 25 November 2002 the parliamentary Liberal Party elected Mr Smyth as its leader, and that he had consented to be Leader of the Opposition. I recognise Mr Smyth as Leader of the Opposition from 25 November 2002, in accordance with standing order 5A.

MR SMYTH (Leader of the Opposition): Mr Speaker, I seek leave to make a statement.

Leave granted.

MR SMYTH: Mr Speaker, I rise today to address the house as the new Leader of the Opposition. It is a great honour to lead the Liberal Party, and I will work hard to uphold the standards and traditions of this great party.

Mr Speaker, I believe that the people of Canberra are sick of political obstruction. I think they are, quite rightly, tired of negative opposition nit-picking and fault finding. I believe that they want ideas, positive input, and constructive solutions from their opposition. They want to know, "If we elect this mob, what will they be like in government?" They cannot know what we will be like as a government if we are just nay-sayers.

However, we must recognise that there is a need for oppositions to keep governments accountable. I accept the view put to me the other day that good governments are made by good oppositions, and this opposition will continue to subject the government to rigorous scrutiny. In short, if the government screws up we will let the people know.

But we won't leave it there. What we will be saying is: "The government has screwed up and here is how to fix the mess." I have already tried to do this as a shadow minister. For example, my response to the public liability insurance crisis is still on the table in this place, and is still the only plan that will actually work. I have suggested publicly how the hospital waiting list crisis can be addressed, and this week I will be moving a motion that inserts the missing links into the health action plan. This is what I am about as a leader. It is about listening to community concerns, scrutinising government policy, and coming up with a solid, constructive solution.

Mr Speaker, I hereby put the government on notice that these examples are just the beginning. The opposition will continue to produce innovative solutions over the next two years. Indeed, by the time we get to the next election the people of Canberra, as well as those opposite, will know exactly what the Canberra Liberals will deliver in government because we will have shown this through our actions as the alternative government.

Mr Speaker, I am a Liberal and I am proud to be leading the Liberal team in this place. I believe in the Liberal traditions of Sir Robert Menzies and note the great strides in all facets of life the country achieved under his leadership.

I believe in having a health system that is of the highest quality and responsive to the needs of Canberra. I believe in an education sector that provides our kids with the skills needed to be successful in life, and that gives parents choice and information about their children's education options. I believe in a community that is safe for all. I believe in social justice. I believe in a sustainable environment. I also believe that business is the only true way of ensuring economic prosperity in the ACT.

Mr Speaker, I believe in reward for effort, and I believe in the motto faber est suae quisque fortunae—each person is the maker of their own fortune. I believe that it is the role of government to provide an environment in which this can happen.

MR SPEAKER: Thank you Mr Smyth.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women): Mr Speaker, I seek leave to make a statement.

Leave granted.

MR STANHOPE: I wish simply to congratulate the Leader of the Opposition on his elevation to that position. It is a significant honour to be elected by one's colleagues and by one's party to the position of leader. I acknowledge that, and I wish to do no more than to congratulate Mr Smyth on succeeding Mr Humphries as Leader of the Opposition and leader of the Liberal Party in the ACT.

I say genuinely that it is a significant honour. It is a significant honour for those of us that are in politics to be afforded the capacity and opportunity to lead a party.

I don't think it should ever be gainsaid that politics at times is a difficult and hard business. Political leadership at times is very demanding and very trying, as I am sure anybody that has been a part of this profession or this calling would readily admit. I have to say I think it is a position and a role that perhaps is not particularly well understood by many within the community.

I am sure, Mr Smyth, that along the way there will be moments of joy certainly and high achievement as well as some low and difficult times that will cause you to reflect on what your colleagues have done to you. But let me do no more than wish you the best, convey my congratulations, and indicate that I look forward to dealing with you in your role as Leader of the Opposition. As I said the other night—and I am sure you understand that this was not necessarily just in jest—I hope it is a position that you occupy and enjoy for a long time. Congratulations.

Legal Affairs—Standing Committee
Scrutiny Report No 23 of 2002

MR STEFANIAK: I present the following report:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report No 23, dated 6 December 2002, together with the relevant minutes of proceedings and the confirmed minutes of meeting No 25.

I seek leave to make a brief statement.

Leave granted..

MR STEFANIAK: Scrutiny report No 23 contains the committee's comments on seven bills, seven pieces of subordinate legislation and three government responses. The report was circulated to members out of session. I commend the report to the Assembly.

Planning and Environment—Standing Committee
Report No 10

MRS DUNNE (10.42): Mr Speaker, I present the following report:

> Planning and Environment—Standing Committee—Report No 10—*Draft Variation No 181 to the Territory Plan—Pearce Section 27 Block 3 (Former Child Care Centre)*, dated 22 November 2002, together with a copy of the extracts of the minutes of proceedings.

I move:

> That the report be noted.

Question resolved in the affirmative.

Report No 11

MRS DUNNE (10.43): I present the following report:

> Planning and Environment—Standing Committee—Report No 11—*Draft Variation No 213 to of the Territory Plan—Kingston Group Centre—(Correction of formal errors)*, dated 22 November 2002, together with a copy of the extract of the minutes of proceedings.

I move:

> That the report be noted.

Question resolved in the affirmative.

Cemeteries and Crematoria Bill 2002
Detail Stage

Clause 1.

Debate resumed from 6 June 2002.

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services) (10.44): Pursuant to standing order 152, I move:

> That order of the day No 1, executive business, relating to the Cemeteries and Crematoria Bill 2002 be discharged from the *Notice Paper*.

The Cemeteries and Crematoria Bill is dead and buried. However, on the third day, Thursday, a new bill will arrive with, I might say, provisions for eternal rest.

Question resolved in the affirmative.

Criminal Code 2002

Debate resumed from 21 November 2002, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (10.45): The opposition will be supporting this bill. We have two small amendments which I will circulate shortly, and I will deal with them at the detail stage. This bill enacts chapters 1, 2 and 4 of the model national criminal code. I think it is probably worth commenting—and I will do so shortly—on just where we are at with the criminal code.

Might I also just say that the scrutiny of bills committee made a number of comments in regard to the legislation now before us and we will be writing further to the Chief Minister about his response to those comments. The committee was basically concerned about what amounted to a bit of a dummy spit by the Chief Minister. We were somewhat surprised by his comments, which also seem to have gotten into the Saturday *Canberra Times*. The committee takes its role very seriously and we are preparing a very detailed letter pointing that out to him. I must express some concern at the tone of his response and I don't want to see that repeated.

I speak for myself as a former Attorney and also for my colleague Mr Humphries, who was an Attorney for many years, when I say that we quite often didn't agree with comments made in scrutiny reports. That is fine. On occasions I, and I think Mr Humphries, pointed out, in much politer terms than the Chief Minister did in relation to this legislation, our opinions and what we felt about particular comments made in scrutiny reports. That is fine; that is natural.

Our committee does not expect everyone to agree with what it says. To assist debate, it merely points things out as best it can in accordance with its terms of reference. But certainly issues will arise with which we disagree and where governments will not agree

with what is being suggested to them by the committee. I want to make that point. But I think the response by the Chief Minister on this occasion—and it is only in relation to this legislation—was a bit over the top. So we will be writing to him further in relation to that.

I am glad that we and the various stakeholders, namely the Law Society and the Bar Association, have had a chance to look further at this legislation. Whilst I don't think they have any particular problems, a very good comment was made to me several weeks ago by the Bar Association in relation to this criminal code. They have concerns in relation to, I suppose, the piecemeal introduction of the model criminal code. Although to some extent this may be unavoidable, it was suggested to me that they would certainly feel a lot more comfortable if the whole exercise were introduced in one hit when it is completed. This would certainly make the role of the profession and their ability to advise clients so much easier.

As it is, they complain that they have to be aware of about three different sets of laws—what is covered and not covered by the code in the ACT and what is covered by other territory laws; and, of course, the laws of New South Wales across the border and Queensland. Indeed, New South Wales has enacted parts of the code and has other laws as well still in place. I thought that suggestion had some merit. I think it is important that the government take on board that suggestion when it is introducing future criminal code legislation.

At present the implementation record is a little bit patchy across the nation. Chapter 2, which relates to general principles of criminal responsibility, is largely picked up through the Commonwealth Criminal Code Act 1995 as well as the Criminal Code Act 2001 of the ACT and the Criminal Law Consolidation (Self Defence) Amendment Act 1997 of South Australia. The criminal jurisdiction part of chapter 2 has been picked up the Commonwealth Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 and the New South Wales Crimes Legislation Amendment Act 2000.

Chapter 3, which deals with theft, fraud and related offences, has been picked up by the Commonwealth Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 and the Criminal Law Consolidation (Offences of Dishonesty) Amendment Bill 2001 in South Australia.

Chapter 4, criminal damage and computer offences, has been picked up by the Crimes Amendment (Computer Offences) Bill 2001 in New South Wales and also the Commonwealth Cybercrime Bill 2001.

Chapter 5, non-fatal offences against the person, is picked up by the Commonwealth Criminal Code Amendment (United Nations and Associated Personnel) Act 2000, the New South Wales Crimes (Female Genital Mutilation) Amendment Act 1994, the ACT Crimes (Amendment) Act (No 3) 1995, the Northern Territory Criminal Code Amendment Act (No 2) 1995, the Statutes Amendment (Female Genital Mutilation and Child Protection) Amendment Act 1995 in South Australia, the Crimes (Female Genital Mutilation) Act 1996 in Victoria and the Criminal Law Amendment Act 2000 in Queensland.

Sexual offences against the person in chapter 5 has been picked up—I won't read out the full titles—by acts in Victoria, South Australia and New South Wales. The code is not yet complete in respect of fatal offences against the person, as set out in chapter 5, but offences have been implemented by the Commonwealth Criminal Code Amendment (United Nations and Associated Personnel) Act 2000.

Chapter 6, serious drug offences, has not been picked up yet, but some of it has been implemented in every jurisdiction except South Australia and New South Wales. Chapter 7, offences against administration of justice, has not yet been picked up by anyone. Chapter 8, "public order offences: contamination of goods", has been picked up by acts in New South Wales, Queensland, Victoria, South Australia and Tasmania. Chapter 9, "offences against humanity: slavery", is picked up by the Commonwealth, South Australia and the Northern Territory.

The category of model provisions for mentally impaired accused was picked up in South Australia in 1995, Victoria in 1997 and the ACT in 1999. Model provisions for forensic procedures was picked up by Victoria in 1997, South Australia in 1998, the Commonwealth in 1998, and the ACT, New South Wales and Tasmania in 2000. Model provisions for the DNA database was picked up by the Commonwealth, New South Wales, the ACT and Tasmania in 2000 and last year by South Australia in the Criminal Law (Forensic Procedures) (Miscellaneous) Amendment Bill. Finally, the abolition of the year and a day rule has been picked up by New South Wales, Victoria, Queensland, Western Australia and Tasmania; and by the ACT in 1995. So although there is still a way to go, quite a bit of the code has now been picked up.

I must say that I had a bit of a chuckle when I read in the explanatory memorandum and, I think, the Chief Minister's speech that some time honoured words in the part of the code which deals with criminal responsibility have been changed to reflect modern times and to make it simpler. This made me scratch my head because initially I thought that the language actually did not seem to be all that much simpler—in fact, it is a little bit clumsy, but I daresay we are all going to get used to it. Several other lawyers I talked to similarly felt that the language was rather quaint, I suppose, and a little bit hard to get your head around, but ultimately, I have no doubt, that will occur.

The provisions of the legislation are of great significance to our community. This bill states some of the very fundamental principles of criminal responsibility. It is indeed evident from the newspaper debate over a number of years that citizens are very interested in questions of criminal responsibility. The scrutiny of bills committee report made mention of that. It points out that citizens are interested in the criminal responsibility of a person who, for example, is drunk and assaults someone; of a person who injures or kills someone found criminally trespassing on that person's property; of a person who kills another, such as a spouse, who is alleged to have battered the person over a long period; or, indeed, people who plead that they were insane when they committed serious offences.

The question of the attribution of criminal responsibility in such cases is not a matter for legal expertise alone. The law in these issues reflects the kind of society we are and want to be. The scrutiny of bills committee mentioned that the rights dimensions are also clear; that the rights of the person who might be punished, or not punished, must be weighed against the rights of the victims and the rights of the community as a whole to

live in a society free of the threat of violence. In relation to all of the examples that were given, the committee felt that the explanatory memorandum had not provided sufficient justification for the purposes of promoting an informed debate of the relevant clauses of the bill. The report went on to say:

> It is understood that this has come about because the Bill seeks to state in the law of the Territory the law as it has been adopted in Commonwealth law. Thus, it has apparently been felt sufficient to merely reproduce parts of the Explanatory Memorandum to the Commonwealth Bill.
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> Nevertheless, the issues raised by the Bill are for the Assembly to determine. While this is an example of "national scheme" law, it is to be noted that the subject-matter is one on which there has always been variance between the States and Territories of Australia. The content of the criminal law has generally been regarded as one lying particularly within the realm of the State and Territory legislatures. Diversity between these jurisdictions reflects the diversity of the history, culture and populations of the components of the federation.

This code is largely what the Commonwealth itself introduced back in 1995. I note that, in talking with government officials, there are some differences in similar aspects of the code in other states. New South Wales, which has not introduced as much as what is proposed in this bill, nevertheless has some provisions which are at some variance with what is proposed here. It is interesting to note that the code that has so far been introduced by the states and territories is not completely uniform. Obviously there are still local differences and historical differences in the various jurisdictions. Indeed, the states have been enacting laws since the 19th century.

Mr Speaker, this is a very important piece of legislation. Questions of criminal responsibility are especially important in our free democratic society. It is crucially important that we get it right. Obviously, a number of amendments will be moved, and I look forward to hearing the government's comments. The opposition has, as I said, two amendments, which I will move at a later stage.

Some other issues have been raised. The scrutiny report talks about rights of the child and the issue of the age of criminal consent. We had that debate not all that long ago in this Assembly. Several years ago we had a debate on legislation we introduced to raise the age of criminal intent from eight to 10 years. Accordingly, that is certainly something the opposition accepts and we will not be moving to amend that part of the bill.

We do, however, have some concerns, which I think are expressed in the scrutiny report, in relation to insanity defences. I think, as a general rule, it is obviously crucially important to ensure that people who are genuinely insane are properly covered. However, the provision should certainly not be misused. I think we need to be very careful about anything that might open the floodgates and that might lead to spurious and improper claims of mental impairment.

I think it is also important when we are adopting criminal codes to continue to use time honoured and tested standards. Indeed, some time honoured standards in relation to trespass, of people protecting property and protecting their loved ones, are replicated in this legislation. However, the government is seeking to add further provisions which I do

not think will necessarily add to the legislation and, accordingly, we have some concerns, which I will elaborate on in the detail stage.

Generally, the opposition will be supporting this bill. I would ask the Chief Minister to take on board, if at all practicable, the comments of the Bar Association. As a former practising lawyer, I can appreciate that there are some very real problems associated with the ability to represent clients. Although the law is changing, there are still differences between jurisdictions, with some of the code operating in some areas and in some other areas not due to operate until 2006.

MRS CROSS (11.00): Mr Speaker, Australia is indeed a wonderful place, but one of the disadvantages of our federation is that inconsistencies which should not occur arise between the various jurisdictions. The criminal law is one of those areas, and the advent of the model criminal code project is an attempt to redress that. As pointed out in the Attorney's tabling speech, the passing of this bill will see the ACT entering the second stage of the criminal code project that began in September last year with the Criminal Code 2001. I broadly support the need to standardise our criminal law in Australia and I congratulate the government on undertaking this mammoth task.

I note, Mr Speaker, that the Greens have circulated an amendment that seeks to clarify legitimate protest and industrial action unintendedly caught by the provisions of the code, particularly as they pertain to acts of terrorism or sabotage. I am advised that the provisions concerning terrorism and sabotage in the model criminal code were in fact written before the tragic events of September 11 and the Bali bombings. In that context, I believe that concerns over the drafting of the definitions of terrorism and sabotage were done at a less emotive time and could not be rightly said to have been intended to catch legitimate protest and industrial action.

That being said, I believe one of the hallmarks of our democracy is the capacity for people to engage in legitimate industrial action and process. To the extent that the Greens' amendment does this, it attracts my support and I will be supporting the amendment and the bill.

MS DUNDAS (11.02): The ACT Democrats will also be supporting the introduction of this criminal code. This bill is the most recent stage in the enormous task of codifying common law offences and trying to get uniformity across the six states, two territories and the Commonwealth in our approach to crime. This project has taken some time. I understand it was started over 15 years ago with the Hon. Lionel Bowen, the then federal Attorney-General, and we expect completion some time around 2006.

The model criminal code is driven by two central aims: that of codification and uniformity. Understandably, there is a strong desire for certainty and equality before the law in all jurisdictions, a need to respond to interstate and international crime, and a need to reduce the potential for cost arising out of interstate legislation. So we have undertaken this ambitious task and we must acknowledge that we have all signed up for certainty and equality before the law.

As I have raised in the past, our current Attorney does not badge himself with a "tough on crime" agenda. Nor has the ACT been subject to the crass "law and order" debates that we witness in other states and which are part of the current New South Wales state

election campaign. So far the ACT has been exempt from a lot of this kind of political nonsense. But my fear is that at meetings of state Attorneys-General the politics could be overwhelming, and the resulting criminal code that we are asked to sign on to may have tougher sentences and stricter regimes than we would prefer.

It should be noted that currently the ACT has the lowest rate of imprisonment in the country, at about 70 prisoners per 100,000 population. This is half the national average. My concern is that, by signing up to a national uniform scheme, we could be signing up to an increase in the prison population.

The disparity between states and territories is just amazing. As I said, the ACT has about 70 prisoners per 100,000 people. Compare that with New South Wales, currently at 155, Tasmania at 103, Western Australia at 217, and the Northern Territory at over 500. What will the criminal code do to the mandatory sentencing regime of the West Australian and Northern Territory governments? Will the criminal code be able to stamp that out, when the federal government has no desire to stop the locking up of mainly indigenous people for petty property crimes? So while the ACT Democrats do agree that uniformity before the law is a desired outcome, I hope that does not mean that changes to our criminal law will see our rate of imprisonment double to be uniform with the other states.

Mr Speaker, this bill is excellent in its codification of many of the principles that already exist in common law. Codified are the elements of an offence, recklessness, negligence, and definitions of strict and absolute liability. It includes provisions regarding intoxication, and codifies the fact that "ignorance is not a defence" in the eyes of the law.

The new section of corporate criminal responsibility is particularly interesting given the events of the last few years both here and overseas of acts such as those surrounding HIH or OneTel, where some directors were guilty of offences in the court of public opinion.

The new offences regarding the threat of property damage, fear of death and harm, are new to the statute books in the ACT, although they have existed in other states for some time. Earlier this year in the "anti-hoax" legislation debates, I objected to those offences as public alarm and anxiety seemed to be open to many interpretations. The current threat offences would seem to be similar in scope, and I would have thought could be used instead of the "anti-hoax" laws that were passed earlier this year.

I might point out, Mr Speaker, that one year has passed since the anthrax hoaxes were occurring around Australia, and it is seven months since we brought in the new "anti-hoax, anti public alarm" laws. I still have not heard of one arrest under this law. Now that we have the offence of threat, the Attorney-General might wish to think about removing the unneeded "anti-hoax" laws.

The offence of sabotage is similar to the hoax legislation in that it contains a broad definition of the offence that union protests, student protests and industrial action could also fit into. My warning here is similar to the warning I made with the hoax legislation. When offences are made so broad and police power so strong, our police are frightened to test the laws and they go unused. This is already the case with the hoax legislation, and I believe the offence of sabotage will sit on the statute books for a long time before it is enacted.

The bill also rewrites some of the statute book in regards to property crime, including the bushfire offences that were rushed through earlier this year to try to catch the media interest that existed.

Mr Speaker, the ACT Democrats will be supporting this bill, but will continue to monitor the use of the criminal code, imprisonment rates and crime prevention strategies to make sure that the ACT does not go down the path of the crass "law and order" campaigns of other states. I also welcome the amendments that have been circulated by Ms Tucker, and I will discuss them further in the detail stage.

MS TUCKER (11.07): The criminal code project, as I said in 2001, is basically a tidying up of our statute books. The process has been carried out by officers from each state and territory jurisdiction through a process of assessing the common law in each jurisdiction, various law reform reports, and arguments raised in submissions.

The aim is to firstly make the principles of criminal law more apparent to citizens by incorporating many parts of court-made law into the statute books. Secondly, there is some intent to lessen the differences between the laws in each state or territory. On this second point, I was reassured to have it emphasised in briefings that this code does not bind the ACT. Also, the important process of courts developing principles in common law will continue. This is not an end to the development of our laws through wise consideration of the detail of real lives and the changing norms of our society. It is a valuable and robust system.

There is no requirement for the ACT to get agreement from other states or territories before we change our laws in the future, nor to amend legislation now. The code, by setting a form, will in any case go a long way to making jurisdictions more similar if and when all jurisdictions implement the code. We do not want to be held to a lowest common denominator. The diversity of views among the members of the Australian Commonwealth allows us to develop innovative ways of addressing problems, many of which we share, but which will all have a bit of a different context in each state.

I do have some concern that, while the code is developed through a national system of consultation and by a committee of departmental officers, including our own representative, when it comes to implementing it here we will not make use of our law reform committee to work through fully, again at a local level, with local stakeholders and courts.

I know that the department has consulted with stakeholders, and has taken on board some of the suggestions. But I have heard some feedback that the time frame, especially on the final bill, was not long enough for organisations to make the kinds of careful reflective comments that we would expect, and we do not have an ACT report to refer to.

We have a law reform commission here, which used to be an important organ for law review and development. The commission in its current form is certainly far from being adequately resourced, and that is something the Greens are keen to see restored, refurbished even, perhaps by making it a statutory body. But we will come back to that later.

I will not discuss every part of the code now. I have, as far as possible, considered elements of the bill that may be of concern, and in those cases consulted people with legal expertise to assist me; and, of course, I have referred to the report of the national Model Criminal Code Officers Committee. That report indicates that committee members went to great efforts in their deliberations to consider input from state and territory case law, practice, and law reform investigations, and also issues raised in submissions. But I cannot say with certainty that this is the very best formulation. I have some quite serious concerns about the chapter 4 offences—with the breadth of sabotage and with the computer offence of possession of data with intent.

The first section, which is the core of the criminal code, deals with the new principles of criminal responsibility. I have a remaining concern that the new part of the definition of mental incapacity may catch too many situations. The mental impairment definition goes beyond our current common law definition, with paragraph (c) specifying that the person could not control the conduct. It has been suggested to me that perhaps under this clause a paedophile could defend himself by claiming that he—and it usually is a he—could not control his conduct. I will be seeking some further advice on this point.

The definition of mental impairment implies a different analysis than that in the Mental Health (Treatment and Care) Act. For this reason, these provisions will not come into force for some time. But that does beg the question: why now? Why not do the work to resolve these differences before we pass this into law? Since the government is intent on proceeding with this enactment now, we will be watching and urging them to do careful work, with enough time being made available for careful consideration by people who will be affected by these changes.

The model used in the code and this bill leaves assessment of the criminal importance of mental illness in each particular case substantially to the jury. This avoids problematic lists of specific types of mental illness, about which there is always some controversy and different schools of thought. The officers committee notes that this has left a moral question rather than a medical question—a jury "should be allowed to consider whether, for example, a defendant's severe personality disorder prevented him or her from knowing the wrongness of the conduct". This decision accords with the broad definition of "disease of the mind" under the M'Naghten Rules (page 37, chapter 2). The committee explains, however, that the disease of the mind concept under M'Naghten has caused great difficulties, and has gone for the inclusory model, as suggested by the Victorian Law Reform Commission.

I have remaining concerns about the haste with which we are instituting the changes to property offences. There are still a few things that seem very strange. Clearly the government is not concerned, so I will not be calling for a division to attempt to remove it this time.

I will conclude with this example: section 118 (3) states that a person can be found guilty of the offence of possession of data with intent to commit a serious computer offence even if committing the serious computer offence is impossible. I believe that this extends criminal responsibility beyond what we previously had in place.

I am also still interested in referring to the Legal Affairs Committee the issue of how we can protect our active civil society and other human rights while we are dealing with the law and order push and anti-terrorism responses.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (11.14), in reply: Mr Speaker, as I indicated in my presentation speech, this bill is the second stage in what is certainly a mammoth project to progressively reform the whole of the criminal law of the ACT. By enacting the code, the criminal law of the ACT will be more accessible and much easier to understand because the general principles of criminal responsibility will be conveniently located in one document and explained in plain English.

There are also other advantages for the ACT. The police, the courts and the profession are already familiar with chapter 2 of the code because of their work in relation to Commonwealth offences. It will be less confusing for ACT law enforcement and the legal profession once all the principles of criminal responsibility are fully implemented, because then the same laws will apply whether an ACT or Commonwealth offence is involved. I acknowledge the comments which Mr Stefaniak made in relation to representation he has received from the bar in that context. But we are engaged in this process and along the way there will be some discomfort perhaps for the profession as they become familiar with the code.

The bill is also an important step in achieving uniformity in the criminal law across Australia. Uniformity is gradually becoming a reality, with all jurisdictions in the country having enacted various parts of the model criminal code since it was first proposed in 1992. It is pleasing, and I think it is a matter of pride, that the ACT has taken a leading role in this effort and has already passed the model provisions on sexual servitude, bushfires, food contamination and female genital mutilation.

The bill also enacts new chapter 4, which will modernise the ACT's computer, sabotage and property damage offences. It is important for the ACT to have an effective range of offences in place and I think in the context of these uncertain times it is important that we have laws that will deal effectively with sabotage and related activities. Chapter 4 will give us the capacity to deal effectively with sabotage. I am aware of an amendment that has been circulated by Ms Tucker in relation to sabotage. I don't support it, I think it is unnecessary and, indeed, counter-productive but I will be happy to deal with that matter at the appropriate time.

In order to bring the in-principle stage debate to a conclusion, I simply wish to do no more than thank all members of the Assembly for foreshadowing their support today for the passage of the criminal code legislation. It is pleasing that each member of the Assembly and the Liberals, through their spokesperson, Mr Stefaniak, have indicated that they will be supporting the bill today and I thank them all for that support.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1 agreed to.

Clause 2.

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

Health and Community Care Services (Repeal and Consequential Amendments) Bill 2002

Debate resumed from 21 November 2002, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MS TUCKER (11.18): This bill formalises the process begun some months ago to build over the purchaser/provider split in ACT health services that was carved out by the previous government in the belief that a commercial process would, by definition, deliver services more efficiently and effectively. I think we have learned that setting up competitive tendering inside a department, across different departments and, as a matter of course, across the community sector has resulted in less innovation, less creativity, less flexibility and less collaboration in the field.

Mental health services, for example, are being—or, presumably, will be—managed more coherently across the two hospitals and in the community. Some of the silo mentality that competing structures encourage will hopefully be eroded under this new set-up.

Clearly, there will also be some advantages in simplifying decision-making and reporting processes. A part of this process, I understand, is a reconfiguring of the performance indicators the department reports on—something better than keeping the minister happy for 90 per cent of the time, for example, such as an action plan with targets and timeframes, say. Either way, the service has already been abolished, so this bill really adjusts the legislation to reflect these changes.

Having recognised its mistake in pitting one hospital against another and having abandoned this business model for the health portfolio, I hope the government now will apply the same logic and vision in its partnership with small non-government organisations—not just in health but across the whole community sector. In other words, the abandonment of the purchaser/provider model inside government service is an encouraging start. But the process needs to be continued across the community sector.

There is UNESCO research on social sustainability in cities that points to the need for connectedness for people and for innovation and collaboration in the activities of their community organisations. The real issues are about how to get our human services, government and community base to work collaboratively and how we can get them to respond creatively to the people we label as clients or consumers. The destruction wreaked on the community providers through chronic under-funding and competitive tendering needs to be addressed. Government needs to ensure that there are models for service delivery that will provide a range of innovative, community-based services.

For example, the Belconnen Youth Centre is the home and birthplace of the Warehouse Circus, a very effective and, significantly, locally based employment-creation, cultural-development program. This is not to disparage the staff delivering generic community service programs, but they rarely have the flexibility or the flat, accessible structure that can support and respond to such opportunities.

Unfortunately, the generic service providers have been particularly advantaged by the competitive tendering processes over the past few years and we are in danger of losing the diversity of models, and so the real creativity in the sector. Rather than merely moving away from our unsatisfactory model, it is time to work towards an approach based on the kind of participation and recognition that Warehouse Circus represents.

MR SMYTH (Leader of the Opposition) (11.22): Mr Speaker, the opposition will not support this bill. The bill is based on two false premises. First, contrary to the Chief Minister's assertion, the health system was not in crisis when he took office. If it's in crisis now, it's because of his doing. But it was not when he came to be Chief Minister and Health Minister.

If it is in crisis now, it will get worse if this bill is adopted. It's that simple. To go back a step, the health system was not in crisis when the Chief Minister took office because the previous government, through rigorous management and record spending, had achieved numerous successes. These include attaining healthy city accreditation from the World Health Organisation; the waiting list for elective surgery being reduced to record lows; the initiation and completion of the nurse practitioner trial; record levels of funding and providing the solid financial position for the current government to do its own spending; and *Setting the agenda*, a comprehensive list of steps to reform in health—targets that were set and met. *Setting the agenda* needs to be compared with the lacklustre health action plan from 2002. The health budget contained internal growth funds to cover the economic anomaly that occurs in health whereby increased mechanisation increases cost.

The second false premise that this bill exists on is that purchaser/provider was a failure. I do not accept that premise. Purchaser/provider created the framework for the successes I have outlined. It trimmed the bureaucracy and forced the health department to provide improved services and outcomes. As an aside, purchaser/provider is also an integral part of the comprehensive accrual accounting system. To get rid of purchaser/provider effectively neuters accrual accounting. However, such methodological niceties are beyond the government's understanding, so I will move on.

Some of what I am going to say may upset some people. It is not intended to. When I speak of bureaucracy, I speak of the tendency of large organisations to go out of control because they are simply large organisations. No-one who is part of this bureaucracy is to be blamed.

Hannah Arendt, the great German-American philosopher, coined the term "the banality of evil" to describe the way in which a bureaucracy can go out of control. In her view, this was essentially the nature of the beast. To combat this particular beast, it takes political will and foresight. To quote the *Yes, Minister* series, it takes "courageous decisions" to nullify the excesses of the bureaucracy. If we narrow down the philosophy to the example at hand, we can see that the political will and foresight necessary to

control the health bureaucracy was purchaser/provider. Take purchaser/provider away and what do we get? We get the ludicrous situation where record spending in health has actually led to reduced services. For example, waiting lists have blown out and must get worse. I would imagine that by the end of the holiday season there will be another 300 people on the waiting lists, perhaps more.

We have Calvary still with another three months of closures to go. Who knows how many weeks Canberra Hospital will close its wards? We have an extra $6 million that was spent as a crisis injection that was to give something like 2,800 cross-weighted separations but indeed only provided 300 extra cross-weighted separations and bought essential machinery. Never mind that we didn't have enough staff at that time—and still don't—to operate such machines. We still have radiotherapy patients forced to seek treatment interstate, some as far away as Adelaide and Brisbane. We have a 7 per cent reduction in psychiatric services at Calvary, despite the government's boasts. Despite the selective use of statistics by Mr Stanhope, mental health services are worse under him than they were under the previous government.

Another example is the emergency department at the Canberra Hospital, where waits of three and four hours are not uncommon and where staff play a macabre game of shuffleboard in order to get patients admitted. Another example is the closure of day care centres for the aged at the same time as we have a large budget allocation on older persons health.

The best example of how the bureaucracy can rocket out of control is the proposed addition of two new executives in the health department. These two executives will cost the territory at least $2 million in the term of their contracts. I do not doubt that the individuals recruited to these jobs will be highly skilled and qualified. What I do doubt is that the money could not be better spent somewhere else. According to the organisation chart presented at the recent health summit, these two fat cat positions do not have their own sections or divisions or groups or silos, or whatever the current parlance is. They float. The only thing that is clear from the chart was that they reported directly to the chief executive. Well, that's not good enough. They must have job descriptions, they must have performance targets, and they must be accountable.

Under purchaser/provider, they would have had job descriptions, they would have had performance targets and they would have been accountable. As a result, the Canberra community would know that they were getting value for their ratepayer dollar. Mr Stanhope will probably come back into the place and talk about the failings of the previous government. He'll possibly talk about Bruce, Hall, the Futsal slab or something like that, as he is wont to do. But I've got a message for him. Wake up. The community needs action. The community needs a leader who doesn't blame the Commonwealth or the previous government. The community needs Mr Stanhope to stop living in the past and do something about the crisis that is health under him.

The removal of the purchaser/provider system will make things worse. It will lead to increased bureaucracy. It will centralise services away from the town centres and make the North Building the equivalent of the forbidden city. We've already seen the sorts of problems we will get. There are already two million reasons why this is a bad idea. Waiting lists will get worse. The emergency department waiting times will get worse. Outcomes will get worse.

Purchaser/provider wasn't perfect but it was working towards getting there. To abandon it is a retrograde step.

There are sections in this bill that is to be repealed that I would like to quote. They are sections 5 and 6 of the bill as it exists. They outline the objectives and the functions of the department. Section 5 says:

> The objectives of the service are—
> (a) to provide health and community care services for residents of the ACT that promote, protect and maintain public health; and
> (b) to maintain quality standards of health and community care services; and
> (c) to take all measures to ensure the efficient and economic operation of its resources; and
> (d) to effectively coordinate the provision of health and community care services.

There is something akin to that in some of the other health bills. But it then goes on to the functions. Section 6 says:

> The functions of the service are—
> (a) to promote, protect and maintain the health of the residents of the ACT; and
> (b) to manage facilities under its control; and
> (c) to consult and cooperate with individuals and organisations concerned with the promotion, protection and maintenance of health; and
> (d) to provide advice to, and to consult with, the administrative unit on the development of health and community care services; and
> (e) to support, encourage and facilitate community involvement in health and community care services; and
> (f) to facilitate and provide training and education in the provision of health and community care services; and
> (g) to collaborate in, and encourage research into, public health and community care; and
> (h) to make available to the public reports, information and advice on public health and the provision of health and community care services; and
> (i) to give residents of the surrounding region the health and community care services, that may be necessary or desirable; and
> (j) to provide the other health and community care services that the Minister approves.

Well, what are the requirements to replace this when we repeal this act? Mr Speaker, I don't believe they're there. What legislative protections will be in place to guard our health system from a bureaucracy gone berserk? I fear there will be none, and I ask members to vote against this bill.

MS DUNDAS (11.31): I rise to speak in support of this bill. The Australian Democrats have been consistent opponents of legislative and policy change driven solely by competition ideology. Whenever the introduction of a competitive market is proposed, the Democrats ask whether the benefits flowing to the community, and to low income people in particular, will be greater than the costs of change.

The implementation of the purchaser/provider model in the ACT public health sector was clearly driven by ideology, and it is obvious why the model failed. There were none of the elements necessary to actually make it succeed. We do not have a health sector at a size where economies of scale can be achieved by a number of providers. We struggle to maintain our capacity in all medical specialities. We do not even have a large enough range of health providers to make true competition possible, except in a few small segments of the sector.

Separation of policy administration from service delivery led to some duplication in the policy and research area—and to the exclusion of health professionals from health policy formulation. These outcomes were clearly to the detriment of the ACT public. Time, energy and money were wasted on protracted contract negotiations and on corporate branding to create identities for the distinct entities created to enable the purchaser/provider model to operate.

The Reid review went on to list even more problems with the model as it has been operating. The contracts were narrowly focused on outputs, and the quoted contract prices did not fully reflect the cost of production. Departmental access to health data was slower and more limited under the arm's-length purchaser/provider model, and contract penalties for missing targets were not imposed in practice, so theoretical cost savings were not actually realised.

Hopefully, with the passing of this bill the experiment will be over—having allowed us enough time for it to become abundantly clear that the model was not going to bring any benefits to ACT residents. I hope that all these problems will be behind us by the end of the next year when the changed arrangements will have been fully implemented. I also hope that the Stanhope government takes the lessons from the health sector on board when considering the introduction of competition in other areas.

I understand that there is a hope that the new structure for the public health system will create an unprecedented new era of coordination, accountability, efficiency and collegiality, and I sincerely hope it does succeed.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (11.34), in reply: Mr Speaker, the aim of this bill, as members have indicated, is to enact the recommendations of the recent review of governance arrangements in health. The bill sweeps away the vestiges of the purchaser/provider system in health.

It's ironic that the key benefits supposedly to be derived from purchaser/provider turned out in fact to be precisely those areas where our performance was found to be wanting. Purchaser/provider is supposed to deliver role clarity. The Reid review found confusion. It was supposed to deliver improved accountability, yet both Reid and Gallop reported that accountability in the system was diffused and weakened. It was supposed to deliver efficiency through competition in the marketplace. Ms Dundas has just quite rightly said that, in a jurisdiction the size of the ACT, this market is virtually non-existent and the goal unrealistic, and I think the best example of that, of course, is the power of the Canberra Hospital. In a purchaser/provider role, the provider, the Canberra Hospital, simply through its status as the major trauma hospital and major public hospital in the

ACT, was so dominant that it effectively had greater power than the purchaser, the then department.

Purchaser/provider also plants the seeds of mistrust between parties that would ordinarily work together. Collaboration diminished as new ways of helping people were regarded as commercially sensitive information to be protected from the competition. Jurisdictions across the globe have turned away from the divisiveness of purchaser/provider and instead have sought more collegial and innovative solutions—to the point where I think the ACT was the last to be engaged in this experiment, all others having abandoned it along the way.

The legislation before us today is part of the government's approach to repair the situation, to replace division with collaboration, and to remove legislative impediments to the development of positive relationships across the health sector.

If those delivering the services aren't working together, the services they provide will put barriers in the way of consumers. This legislation puts an end to a situation in which Health had multiple agencies and multiple chief executives, each reporting separately to the minister. Such a situation seriously compromised the ACT community's confidence in our health system and its capacity to manage itself. As minister, I decided very early that I could not allow this to continue, and I have acted decisively to change it.

The separate legal identity for the service has operated as a barrier across a range of portfolio matters, including, for example, confusion around whether the territory or the service is the legal employer of the staff, and the bill resolves this confusion. The repeal bill enables the recreation of the legislative and organisational arrangements as they existed before 1996. The new and whole ACT health entity comprises different administrative units, including Community Care and the Canberra Hospital. All units will retain their corporate identity within the organisation, in much the same way as ACT Housing and ACT Forests do within their departments.

The integrity of the Canberra Hospital is maintained. The position of chief executive of ACT Health will have full accountability within the portfolio, including policy, planning and service provision. In reality, this arrangement has been in place since June, when the chief executive was appointed as administrator for the service.

The bill simplifies the legislative arrangements and formalises the practical reality. The legislation before us today centralises authority and clarifies relationships and lines of accountability. Responsibilities which previously were vested in the health and community care service now clearly become vested in the territory with the proper entity.

The focus of the changes I have described today is to ensure that the health system has in place the right legislative framework to deliver real accountability to the community, and, even more importantly, through that accountability to improve health outcomes.

I will move a government amendment to the bill to allow for a 31 December commencement date for the legislation. This is to ensure compliance with the Auditor-General's requirement to produce full accrual financial statements for the statutory

authority for the period from 1 July 2002 up until its cessation date, which will now be 31 December 2002, and to comply with Health's monthly reporting arrangements.

I thank the scrutiny of bills committee for its report and note the comment it makes regarding the so-called Henry VIII clause giving the executive some particular powers regarding some of the consequential amendments to the bill. However, like the scrutiny committee, I note that this clause applies only to the transitional arrangements in part 8 of the legislation. It does not apply to the substantive provisions of the act. A clause such as this is common in legislation where a transitional arrangement is necessary.

A provision such as this was included in the Civil Law (Wrongs) Act and it has already been necessary to use it to make a regulation to maintain the previous legislative provisions with respect to costs where an action has already commenced. This is just an example of how we cannot necessarily anticipate every consequence of the piece of legislation in the transitional period, and the regulation-making power enables us to quickly correct the problem. In addition, the clause itself has a sunset provision and it expires 12 months after the time this bill becomes law. Finally, there's a further protection, which is that any regulations made by the executive under this provision must be tabled in the Assembly and are disallowable.

This bill formally implements the recommendations of the Reid review, which was specifically tasked with a full analysis and review of the governance arrangements in health, recognising that there were issues that we needed to confront. The outcomes of that particular review by Mr Reid indicate that the role which we are pursuing through this legislation is appropriate to the circumstances of the ACT at this time, as we endeavour to ensure that we have the capacity to deliver the best possible health services to the people of the ACT.

Before concluding, I will respond to just one of the points made by Mr Smyth in his remarks on the legislation. I refer to his remarks about how a move away from purchaser/provider is a signal to the public service to go beserk in terms of featherbedding and the creation of provisions for fat cats, as Mr Smyth describes it. I think Mr Smyth's comments in relation to the additional provisions that have been created within the department of health really do illustrate his lack of support for the public service, and a lack of understanding of how thin our public service is. It strikes me as remarkable that somebody who just over a year ago was a minister in the ACT government could for one minute think that there's any fat within the ACT public service. If Mr Smyth's CEOs and senior public servants did not tell him time and time again just how thin the senior levels within the ACT public service are, and the extent to which that compromises the delivery of the range of policy advice which ministers and governments look for, then I'll go she.

I would be surprised if that is not the experience of every single minister in the previous government, because it certainly is the experience of every minister in this government that we do run a tight, fine ship. To suggest that there are fat cats within the ACT public service, and that there is featherbedding at the senior levels particularly within the ACT public service, despite Mr Smyth's attempts at pretending that this wasn't a personal attack on public servants, is precisely that. It is a continuation of a consistent theme of the Liberal Party in this place—that they don't like public servants, they don't like the

public service, and they don't miss an opportunity to put the boot in if they think there is a political point to be scored by attacking the public service.

To suggest that the creation of a single senior executive position within the department of health and of a chief nurse position is the public service reacting with wild abandonment to the abolition of purchaser/provider really is extreme, and really shows a total lack of understanding of the needs of the health system and indeed of the operations of the ACT public service. It is offensive to the public service, despite Mr Smyth's attempts at seeking to distance himself from being just a public-service basher.

Question put:

> That this bill be agreed to in principle.

Ayes 10		Noes 5
Mr Berry	Mr Hargreaves	Mr Cornwell
Mr Corbell	Ms MacDonald	Mr Humphries
Mrs Cross	Mr Quinlan	Mr Pratt
Ms Dundas	Mr Stanhope	Mr Smyth
Ms Gallagher	Ms Tucker	Mr Stefaniak

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1 agreed to.

Clause 2.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (11.47): I move amendment No 1 circulated in my name *[see schedule 1 at page 4185]*.

Mr Speaker, the ACT Auditor-General advised that it will be necessary for the production of full accrual financial statements for the statutory authority for the period from 1 July 2002 up until its cessation date of 31 December. These will be subject to the same level of audit scrutiny as the full-year financial statements that appear in the annual report.

The financial system used within the health portfolio is designed to facilitate monthly reporting. There is a regular end-of-month cut-off which enables the easy identification of the accounting period to which transactions relate. It is therefore desirable to have the commencement date specified as at the end of the month, in this case December 2002. So clause 2 substitutes the commencement provision from the day after its notification to 5 pm on 31 December 2002.

Amendment agreed to.

Clause 2, as amended, agreed to.

Remainder of bill, by leave, taken as a whole and agreed to.

Bill, as amended, agreed to.

Revenue Legislation Amendment Bill 2002 (No 2)

Debate resumed from 14 November 2002, on motion by **Mr Quinlan**:

> That this bill be agreed to in principle.

MR HUMPHRIES (11.48): The opposition will support this bill, although it has had to undertake some consultation with the business community of Canberra to establish exactly what the bill is about. In conducting that consultation, I noted that we trod a path not previously trodden by the government, with the result that there was some concern and even alarm in the business community about aspects of this legislation. It is a pity that the opposition had to be the ones to bring the bill to the attention of the business community in the first place.

This bill is, for the most part, minor and technical in nature, and provides that there should be a number of clarifications to effect the general intention of the original legislation that was put forward in this place. For example, a flaw has been identified in the first home owners legislation enacted a couple of years ago in response to the federal government's initiative to provide a first home owners grant. That provision provided that, before a certain date, ownership of a house or property would preclude a person from taking advantage of the first home owners scheme.

Subsequently, of course, people have acquired some properties after the particular date that was specified and technically, therefore, qualify for ownership and may apply for a first home owners grant. Clearly, the intention of the legislation is that such grants should only be available to people who have not previously owned a home. This legislation makes that clear. It brings the intention in line with the wording of the legislation. There are also provisions allowing for the recovery of fees for certain conveyancing-related services. That appears to be the current practice and, if the legislation now aligns the law with the practice, that would be a good thing.

The only provision in the legislation that gave me and some of the business organisations in Canberra concern was effectively the removal of the term "city area" as a basis for the calculation of rates and land tax in the territory. The Treasurer's office was kind enough to supply me with a map this morning, showing where the city area actually is. Members might care to have a look at this. It is not, as one might imagine, the area of the city which is built up, but in fact a very large swathe of the territory, the boundaries of which are determined by things like the Molonglo River and lines drawn between mountains or hills in the territory, with the result that the area is quite large.

The effect of the bill is that properties outside of the city area—so defined in an instrument that dates back to the Whitlam government—are to now attract commercial levels of land tax in the event that they are commercial in nature, as opposed to rural, residential or something else. That appears to be an appropriate transition.

There is obviously no particularly strong argument for distinguishing between the use that is made of land depending on where it falls in relation to an arbitrary line. As I've indicated, this line does appear to be particularly arbitrary. It is obviously more appropriate to determine the level of land tax or rates based on the purpose of the lease and the extent to which the property is used for that purpose. That much of the legislation I think is supportable.

The concern that my party has had about the program is that presumably a number of leaseholders of commercial properties were unaware, and perhaps are still unaware, of the change in their status being effected by this legislation. The Treasurer notes in his explanatory memorandum or his presentation speech—I don't recall which—that, if there is a problem with particular businesses, he is prepared to exercise powers of remission to provide for some kind of transition period. That would be an appropriate thing to do and I commend him for that. He also notes that it is expected that only an extra $7,000 per annum will be collected after the passage of this legislation.

One thing that isn't made clear in the bill and in the presentation speech—and perhaps the minister can clarify this later on—is whether or not there are rural businesses inside the city area which will have lower levels of rates or land tax because that line has effectively been abolished for the purposes of the calculation of such charges. I assume that the $7,000 a year increase in the size of the government tax take is a net figure: that it is not purely a $7,000 increase in the tax paid by businesses, but that there is also some reduction in the tax paid by other leaseholders because they fall inside the city area, but are not commercial in nature.

I do commend the government for taking these sorts of provisions to the affected parts of the community soon after they were introduced into this place. The fact is that it is a matter of some concern that there could be businesses which receive significantly larger bills for rates in the next 12 months. They will have no idea why they are receiving them, and concerns will have to be allayed with that information. We will support this legislation, but I hope that different procedures can be used in the future to deal with provisions of this kind, which do affect certain sections of the community.

MS DUNDAS (11.55): The ACT Democrats will be supporting this bill. We understand that the measures in this bill about the first home owners grant and payroll tax are merely administrative measures that were missed in the drafting, or that the language has changed over the years. However, it is interesting that the payroll tax law has been operating for quite a while still referring to the now defunct CES, but we haven't fixed it until now. That is something that we need to watch throughout our legislation.

I also support the government's move to determine conveyancing fees by disallowable instrument. As we found out last sitting week when we were dealing with street names, disallowable instruments are sometimes worthy of debate in the Assembly, and worth disallowing or amending. I commend the government for this measure.

Finally, the controversial element of the bill is the changing of categories for non-residential land use outside the city area. In the process of updating the language, the government is imposing what I understand to be an estimated increase of $7,000 in rates and land tax on the ACT businesses affected, by charging them the same percentage of rates and land tax as their Civic-based colleagues. This is a tax on business and, although it is only a small revenue measure, it should be discussed in those contexts.

The ACT Democrats will cautiously support this measure but, if we are contacted by small businesses facing overly onerous financial burdens as a result, we will take up the Treasurer's offer to look at each situation on a case-by-case basis to ensure that the business people will have the fair hearing that the Treasurer has promised.

MS TUCKER (11.57): The Greens will also be supporting this legislation. It makes minor amendments to three acts relating to revenue raising. The simplest is the amendment to the Payroll Tax Act, which removes the reference to the Commonwealth Employment Service, which our federal Liberal government abolished a few years ago. The amendment to the First Home Owner Grant Act clarifies that the grant is only payable to people who have not bought and lived in a property before applying for a grant for the acquisition of a different property.

The third, and more complicated, amendment is to the Rates and Land Tax Act. This amendment removes the obsolete term, "city area". This term was used in a now repealed act to describe the area of developed land within the ACT. Up until now, properties outside the city area were rated according to the formula applying to rural blocks, regardless of the use of the land. This bill provides that all blocks in the ACT will now be classified as either residential, commercial or rural for rating purposes. This has necessitated some adjustment to the way the rating is calculated on properties in the rural parts of the ACT that are not used for rural purposes. These blocks will now be rated as commercial properties.

I understand that the rates liability of some 12 affected properties will require re-evaluation. The minister, in his presentation speech, said that he is prepared to provide a partial remission of the additional rates charge on these properties on a case-by-case basis, which seems a reasonable way of phasing in this new system.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections) (11.59), in reply: I thank members for their support of this legislation. I will not outline the bill's functions as that has just been done, but I will repeat my assurances. Let me say, while I have the officers concerned in the chamber, that we will write to those leaseholders directly affected. We will make the point that we are prepared to entertain some phase-in process for the people affected.

These include groups such as a couple of the shooting clubs that have leases outside the defined city area, the Uniting Church—I don't know what it does—and the ACT Nudist Club, for whom, if they bare their soles to us, we'd be happy to entertain some form of transition by virtue of remission. To clarify the answer to the question asked by Mr Humphries, all rural properties inside the city area, as already defined, pay at rural rates by remission anyway. With that, Mr Speaker, I thank members for their support of the legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Statute Law Amendment Bill 2002 (No 2)

Debate resumed from 14 November 2002, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (12.01): The opposition will be supporting this bill. It is a bill that makes some technical and minor amendments that are not controversial. Indeed, several of them are important, and help to simplify the law and clarify some situations that shouldn't have been allowed to develop.

I am glad we have had the opportunity to avoid dealing with this bill in the November sittings, to give other people two weeks to look at it. I think it is especially important that groups such as the Law Society and the Bar Association have a chance to look at pieces of legislation such as this, and they have done that now.

I have had a good look through it, too. It is always a temptation for people to slip something in there, and actually use a procedural bill like this to take out some piece of legislation. However, that does not appear to have happened, which is a good thing. What it does do is what it says it will do. It does a number of things that are quite important, although of a minor nature.

First, schedule 1 does contain some amendments which have been proposed by government agencies. It makes some sensible amendments. The Intoxicated Persons (Care and Protection) Act is amended. The new shelter has opening hours from 8 pm to 10 am and the law, as it existed, gave people only 12 hours to sober up there before they were discharged. By extending that to 15 hours, this bill now takes into account the fact that that shelter will be open from 8 pm to 10 am and it will enable people to be discharged at 10 am if need be. I think that is a sensible move.

There are some other amendments of a minor nature, for example, an amendment to the Workers Compensation Act that ensures that work experience students are not taken to be workers. That is a small but sensible amendment. Similarly, the Nature Conservation Act has been amended to enable a conservator to use the one set of procedures to close nature parks and special purpose reserves in emergencies such as bushfires. After the dreadful bushfires of last year, and the terrible bushfires we are seeing interstate now, that is a sensible provision.

Schedule 2 deals with structural amendments and contains amendments to the Legislation Act of 2001 that have been proposed by parliamentary counsel to ensure that the overall structure of the statute book is consistent and reflects best practice. Again, we have no problems there.

Schedule 3 just deals with typos and omits some redundant provisions, and schedules 4 and 5 repeal obsolete and unnecessary legislation proposed by government agencies and by parliamentary counsel.

As someone who studied law along with the Chief Minister in the early 1970s, and who grew up with some of these splendid old imperial acts, I feel it is rather a shame to see some of them go. I accept that the Colonial Courts of Admiralty Act of 1890 is completely redundant now, as a result of the Admiralty Act of 1988, which the Commonwealth introduced.

The Colonial Laws Validity Act of 1865 is an oldie but a goody. It is a real shame to see that go. I would like to leave that on the statute book for posterity's sake, even though it probably does not mean anything anymore. I remember learning about that one as a student.

The Merchant Shipping Act of 1894, which would not be hugely applicable to the Australian Capital Territory at any rate, is for the chop, too. Then there is the Offences at Sea Act of 1536, from the reign of good old Henry VIII. I do not know which wife he was up to at that stage but, again, it is a bit of a shame to see it go. It is rather nice to keep a really historic act there but, again, it has no great applicability to the ACT.

Of course, the Chief Minister mentioned the piracy acts, which have very little applicability to the ACT. I do not think anyone has committed an act of piracy on Lake Burley Griffin, although I am pleased to say that the Assembly dragon boat team of 1991 did manage to sink a school team. We actually managed to come second in that race. We might have been acting like pirates, but we would not have breached that act. Again, it is fairly irrelevant.

It is a shame to see that the Piracy Punishment Act has already been amended. The death penalty has gone and imprisonment replaces it. Again, however, that act is for the chop as well. It is a more recent act, actually, the Piracy Punishment Act of 1902, but again it does not have much applicability to the ACT. While it is a bit of a shame to see some of those classic old acts go, I understand the need to upgrade our statute book and the opposition will be supporting this bill.

MS DUNDAS (12.06): The Australian Democrats will also be supporting this second Statute Law Amendment Bill. It is, thankfully, slightly smaller than the 400-page bill debated in June and August of this year. I understand that this is a non-controversial bill containing minor technical amendments to 37 acts, that also repeals some obsolete acts that are so archaic that they bring a comical nature to the bill. While it has occurred to me that the pedal boats on Lake Burley Griffin do sometimes get out of control, the thought of ever having to invoke the Piracy Punishment Act of 1902 had not yet occurred to me.

Repealing these acts, as well as the more contemporary but equally biased Insane Persons and Inebriates (Committal and Detention) Act, will ensure that the ACT statute book is modern, accurate and reflects the values of Canberrans and of legislators.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1 agreed to.

Clause 2.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (12.07): I move amendment No 1 circulated in my name *[see schedule 2 at page 4185]*. This is an amendment of the commencement provision to ensure that the parts of the bill that contain offence provisions commence before 1 January 2003. The criminal code will apply to all offences that commence on or after that date, assuming it is passed. It is important that the code does not apply to offences until they have been made consistent with the code. The offence provisions in this bill are not yet in that form, but will be reviewed in the context of a systematic review of all offences on the statute book before 1 January 2006. From that date the code will apply to all offences in the ACT.

Amendment agreed to.

Clause 2, as amended, agreed to.

Clauses 3 to 6, by leave, taken together and agreed to.

Schedules 1 and 2, by leave, taken together and agreed to.

Schedule 3.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (12.09): I move amendment No 2 circulated in my name *[see schedule 2 at page 4185]*. This amendment is to remove from the bill the amendments of the ACTION Authority Act 2001, that are in schedule 3, part 3.1. These technical amendments have been overtaken by other amendments in the ACTION Authority Amendment Bill 2002, which is to be presented to the Assembly by my colleague, Mr Wood, on Thursday.

Amendment agreed to.

Schedule 3, as amended, agreed to.

Remainder of bill, by leave, taken as a whole and agreed to.

Bill as amended, agreed to.

Rehabilitation of Offenders (Interim) Amendment Bill 2002 (No 2)

Debate resumed from 21 November 2002, on motion by **Mr Quinlan**:

> That this bill be agreed to in principle.

MR STEFANIAK (12.10): Mr Smyth actually has carriage of this, Mr Speaker, but I understand that we will be supporting it. He should be along soon. I've left a message for him and he should be on his way. I understand the bill makes a number of sensible amendments and my colleague, Mr Smyth, will elaborate further on those.

MR SMYTH (Leader of the Opposition) (12.11): It is good to see the house proceeding through its business quite rapidly. The opposition will be supporting this bill. It is mainly machinery, based on changing words such as "apprehend" to "arrest", for example, but there are three other points that I want to address.

Sections 42, 46 and 96 put in place important information and privacy provisions for victims of crime. These provisions are to ensure that victims' addresses are not revealed to offenders, and that victims are informed of offenders releases when offenders are on parole.

Sections 54, 58 and 62 give greater power to the board to arrest parole violators and revoke their parole. Sections 22 (1) and 22 (2) provide for the power to arrest offenders who have breached home detention orders. We believe that these elements are commonsense additions. Perhaps they should have been included from the outset. I thank the government for adding them to an otherwise excellent act.

Debate (on motion by **Ms Tucker**) adjourned to a later hour.

Sitting suspended from 12.12 to 2.30 pm.

Questions without notice

Health executives

MR SMYTH: Mr Speaker, my question is for the Minister for Health, Mr Stanhope. Minister, it was recently announced that two executive positions, described as deputy chief executive positions, had been created in your department. The two positions are for an executive coordinator, strategic development, and an executive coordinator, territory-wide services. Please note, Minister, I am not talking about the position of chief nurse. What responsibilities will these two positions have? Can the minister advise the costs of both positions, including salary and on-costs such as superannuation? Have both of these positions been filled and, if not, when do you anticipate that they will be filled?

MR STANHOPE: Thank you, Mr Smyth, for your question. Yes, indeed. Consequent on the significant restructuring that has occurred in the department of health, there has been, as members are aware, a complete rejigging of the executive structure in the department of health—indeed, within the health portfolio. There are two new positions of, essentially, deputy CEO. One of the positions is the executive coordinator,

strategic development. That particular position replaces one of the jobs that were abolished during the restructure, and to that extent the claim that the Leader of the Opposition has made in relation to the $2 million being extra is, of course, erroneous. One of the positions is simply a replacement of the job that became vacant on the separation away from the portfolio of disabilities. So it is essentially a vacant position that has been redesigned.

The position will focus on setting and achieving strategic goals in health. It is vital in moving health away from, really, the short-termism which characterised the purchaser/provider system which was so seriously commented on and reported on by Michael Reid in his report on health service delivery, which was the basis of the restructure in the first place.

The second position is a new position. It is the position of executive coordinator, territory-wide services, and it is the embodiment of both the Reid report and this government's commitment to building networks between service providers and arranging health services better to meet the needs of consumers. At the heart of the Reid report in relation to health service delivery in the ACT was the need for far greater coordination and collaboration. To the extent that there was a major criticism of health structures within the ACT, it was around a lack of collegiality, a lack of cooperation and a lack of cohesion. That went to the heart of the report and was the basis of the restructuring which we have undertaken.

This seems to me eminently sensible, in the face of the major criticisms that were made of the system—a system that certainly was under severe strain, and with a departmental structure that is required to operate in what is, I think, one of the most testing areas of administration that any government faces anywhere in Australia, if not the world; namely, the delivery of an affordable, universal health system for all its citizens. That is what this particular position is charged with achieving.

I think we need to acknowledge that, if we are to achieve efficiencies across the system, they will come through greater collaboration and great cohesion. We have two major public hospitals in the ACT, in the Canberra Hospital and Calvary Hospital. We need always to look at the efficiencies that can be gained through greater collaboration, not just within the public system but between the public system and the private system. There are some big issues there. For instance, in relation to pathology service delivery, an issue that we have moved on recently, we have to ensure that we achieve the efficiencies that can be gained from a coordinated system—and not just the efficiencies, but also the quality of health care delivery.

Of course, this applies in a whole range of other areas. I heard Mr Smyth comment on this in his speech this morning on the legislation that we passed today to make a fact of the restructure. Referring to psychiatric services, he mentioned the need for us to ensure, in relation to all of those services where there is a service provider at Calvary and a service provider at Canberra Hospital, that we do gain the greatest efficiencies we can. And, yes, there was a reduction in some beds at Calvary Hospital, but it was a reduction that was done in a coordinated, planned way so as to in fact enhance service delivery in relation to psychiatric and mental health services. It has achieved that, and will continue to achieve efficiencies and a greater provision of services to people with a mental illness in the ACT.

I think it is interesting that Mr Smyth specifically excludes the chief nurse position from his criticism of fat cats and public service featherbedding. Why does he do that? He does that because he is comfortable bashing up public servants. It is a sport he enjoys. It is a sport the Liberal Party has always engaged in, and he does it again. It is fair game to beat up public servants, to call a senior public servant a fat cat, and to say that the public service featherbeds. It is fair game to say that the ACT's hard-working public service sits around twiddling its thumbs and doddling, not actually doing any real work—that we're overstaffed at the senior levels; they don't have enough to do. It is fair enough to bash public servants, but, dear me, it is not fair game to bash nurses.

Why is it that Mr Smyth will launch a whole-scale attack on two senior public servants but not on a senior nurse? It is because he is happy bashing up public servants, because it's where he comes from. He has no understanding of the public service or how it operates. He thinks they're all sitting over there doddling; they're not real workers; they're not actually making a real commitment; they're not in the private sector so they don't count.

But, dear me, you had better not be seen to be attacking or casting any aspersions on nurses. So let's not actually attack the chief nurse position which we have created. Let's actually attack public servants, because it's what the Liberal Party does, it's what they've always done, and it's what they will continue to do.

MR SMYTH: Mr Speaker, I ask a supplementary question. I actually asked at what level those two positions were being filled, which must have been overlooked, so I assume the Chief Minister is taking that on notice. But my supplementary question is: at what level will the ACT chief nurse position be filled?

MR STANHOPE: I'm more than happy to provide a specific public service classification for Mr Smyth. The chief nurse position, I believe, is a 1.8, but I'm not quite sure what level the new executive directors are at. But certainly the chief nurse position is a very significant position, and I am pleased that at least at the end, as a supplementary or as an afterthought, Mr Smyth is prepared to actually give some acknowledgment to the fact that he actually recognises this position and its importance.

One of the great problems we have in the ACT, and of course in all health systems around Australia, is the drastic, gross work force shortages that we face. Of course, the greatest of them is in relation to nursing. I think it is probably not lost on us that the single greatest number of workers within the health system is, of course, nurses, and the most undervalued and least respected of the health work force traditionally has been nurses. There is a very significant issue here for us in relation to this ACT-wide, national and international shortage of nurses. The predictions for nurse shortages into the future are truly frightening, and it does behove us to pursue a whole range of options.

The Commonwealth, of course, needs to lead the way; it needs to play its part. Just last week I called on the Commonwealth, at least as an immediate, interim response to the major work force shortages we have in nursing, to agree to abandon HECS for, say three years. There are things that can be done immediately. We can show that this really is an urgent issue. We can actually say, "Let's not have HECS in relation to nursing." There

are major shortages; there are not enough positions in our universities. It just seems to me such a classic that we've got these dramatic shortages in nurses. Every jurisdiction, every hospital in Australia, every system in Australia, has untold numbers of vacancies. We have them here in the ACT. We have funded positions we cannot fill. We cannot train enough nurses yet. But—surprise, surprise—there are currently more people applying to study nursing than there are places being offered. Doesn't it seem that there is something wrong about this? There are more people applying to study nursing at university than there are places available. So we've got a double-bunger problem there in the first place. The people aren't able to study nursing, and when they do there is the massive disincentive of HECS.

So there are other things that the Commonwealth can and should be doing in relation to nursing, but there are responsibilities that the states and territories need to pick up, and one of them is to respond in the way we have. We resolved the nurses dispute on coming into government—a dispute that you allowed to run for over a year. The Liberals had no intention of fixing that dispute; they in fact exacerbated it. You stirred it up, you demeaned nursing as a profession, and you demeaned the union. Only when we got into government was there any genuine attempt at fixing that dispute, and we fixed it within, what, six weeks. It was done. You could not do it. You had no intention of doing it. You simply inflamed it.

One of the reasons you could not fix it, of course, is that you did not fund it. You did not actually fund a pay rise. You went around pretending you were prepared to give a pay rise, but you had not funded it. So you left that to us as well. We resolved the nurses dispute, but there is more that we need to do, and one of the things we can do—

Mr Stefaniak: I raise a point of order, Mr Speaker. Standing order 118 (a) says that answers to questions shall be concise. It is nearly a quarter to three now, Mr Speaker, and we are still on the first question.

MR SPEAKER: That is a point well made, Mr Stefaniak. Mr Stanhope.

Mr Stanhope: I have concluded, Mr Speaker.

Hospital implosion

MRS CROSS: Mr Speaker, my question is addressed to the Attorney-General. Minister, it is now five years since the Bender family had their lives destroyed by the catastrophe of the Canberra Hospital implosion, and yet no justice has been done to the victims. Minister, can you confirm that you are the relevant person instructing the government solicitors representing the territory in negotiations for settlement with the Bender family? Alternatively, if you are not the person instructing the government solicitor in this matter, who is the person who will give the go-ahead and tick off the settlement with the Bender family? Can you also inform the Assembly whether you believe that a settlement is possible before Christmas?

MR STANHOPE: Yes, Mrs Cross, as the Attorney-General, I am the minister responsible for the management of the claims made by the Bender family against the ACT government. It needs to be understood that, to some extent, some of these matters are caught within the legal system, and there is some element of sub judice around issues

relating to legal action being pursued by the Benders against the ACT government. But I am mindful of that, Mrs Cross, and, as much as I am happy to be, as always, open on all issues of interest to the community, there are some constraints on me in relation to answering questions in light of the sub judice rule.

It needs to be understood that the Bender family initiated at least three actions: one against the ACT government, one against Totalcare, which is an entity separate from the ACT government, and one against Project Coordination, the project managers for the project. The actions, as is always the case, are handled by each of the defendants' respective insurers. The matter is complicated by the fact that each of the defendants do not have the same insurer. Each of the defendants, of course, is legally represented. The ACT government, on instructions from me, is represented by the ACT Government Solicitor. Project Coordination and Totalcare have instructed others to represent them. The Bender family is represented by Mr Collaery.

There have been negotiations, correspondence and action in relation to these issues over a number of years. Suffice it to say, each of us would like to see matters around the tragic circumstances of Katie Bender's death brought to a conclusion that allows the Bender family, the parents and the children, solace and completion in relation to this matter.

I have had discussions with the ACT Government Solicitor, whom I instruct, about my desire to see an early conclusion of the matter. But it is not possible or appropriate for the ACT Government Solicitor to separate itself and the ACT government from the co-defendants in relation to this matter. It's fair for me to say, without revealing things that are relevant to the negotiations and the action, that the Bender family, through their counsel, Bernard Collaery, are seeking very significant compensation. There are some significant matters here. If it was a case of me just rolling up and saying, "Look, this has gone on long enough. This needs to be settled; do what it takes," I could do that, but it would not be responsible.

One part of me wants to do that. One part of me wants to see this brought to a conclusion. It has been going on for far too long. But it simply is not, and would not be, responsible of me, as Attorney-General, to say to the ACT Government Solicitor, representing one of the three defendants in this matter, "Look, do what it takes; just fix it. Get this over and done with. Allow the Benders to move on." It's not like that. There are a whole range of legal issues involved in this. Of course, those legal issues, and some of the legal principles that are relevant to this, are, of course, affected very much by the trauma and the pain that we all know is part and parcel of this action. It is very much part of the Canberra psyche, to some extent. It is something that we are all affected by. I have to say, I, along with tens of thousands of Canberrans, cannot visit the National Museum without thinking of Katie Bender. I have yet to visit Acton Peninsula or the Australian Museum without thinking of Katie Bender and I don't think I could ever, for the rest of my time in Canberra, visit the National Museum without thinking of Katie Bender.

So that is the experience of all of us, and it is something we want to see resolved. I will conclude on this matter. The negotiations are difficult, and I don't want to intrude too much into that, other than to say that I have expressly urged on the ACT Government Solicitor whatever actions we can take to facilitate a settlement of this matter. But there

are other defendants, there are other insurance companies and there are a range of other issues that are simply beyond the control of the ACT government.

We are talking about a whole range of issues that make it simply not possible for me to stand up as Attorney-General and say, "Look, we'll fix it. We'll just ignore the other defendants. We'll ignore the other insurance companies. We'll just pay whatever it takes." That just would not be responsible. I have to say that we had sought to have the matter mediated; we have sought an agreement from Mr Collaery and the Benders' counsel to independent mediation of this matter. We are happy to submit to independent mediation. It has not been for want of trying or effort on our part.

MR SPEAKER: Thank you, Mr Stanhope. Before I go to Mrs Cross for a possible supplementary question I would like to welcome the newly elected SRC representatives and campus captains from MacKillop Catholic College. Welcome. Mrs Cross, would you like to ask a supplementary question?

MRS CROSS: Yes, Mr Speaker, I'd like to thank the Chief Minister for his answer. Minister, is it true that a legal device known as a Calderbank letter is sometimes used as an inducement—in effect, a threat or risk that a litigant may have to wear the costs if they don't accept a settlement offer? Minister, are you able to rule out instructing the Government Solicitor to issue a Calderbank letter in settlement negotiations with the Bender family?

MR SPEAKER: Do we get into the area of sub judice matters? I think Mrs Cross is asking for a legal opinion of the Attorney-General. I will leave it to the Attorney-General to handle this.

MR STANHOPE: I am happy to take the question on notice, Mrs Cross, and to take some advice on it. I know this is a matter of significant moment to this community. I am more than happy to provide to members whatever information it is appropriate to provide, within the constraints of the negotiations that are currently part of this legal action.

Land development

MS GALLAGHER: My question is directed to the Minister for Planning, Mr Corbell. Minister, I note that the Housing Industry Association and the Master Builders Association have once again advertised their opposition to the government's land development initiative in the *Canberra Times* today. Can the minister inform the Assembly what representations he has received on the government's initiative?

MR CORBELL: I thank Ms Gallagher for the question. Indeed, Mr Speaker, I note again today that the Master Builders Association and the Housing Industry Association are continuing their campaign, through print advertisement, against the government's policy of public land development activity in the ACT, both by the government itself and through partnership with private sector developers.

I can confirm for members that a large number of individual builders, including many small builders, and indeed many individual members of the public, have approached me since the government announced the establishment of its policy to say that they support

the government's initiative. Why do they support the government's initiative? They support it because they see it as an opportunity for individual Canberra citizens to buy land directly—without having to buy a house and land package, without having to go through a land developer such as those that currently exist in the ACT.

I have also been approached by another citizen of Canberra, Mr Terry Snow. Mr Snow has allowed me to make public his letter to me supporting the Stanhope government's planning initiatives. Indeed, Mr Snow has labelled as nonsense the claims by the Master Builders Association and the HIA. I am sure that Mr Snow is well known to members of the Liberal Party.

Mr Snow has explicitly backed the government's approach to land development and the government's approach for strategic planning in this city. It must in some ways gall Mr Snow to know that in six years that mob over there never grasped the nettle. But at least he has the courage of his convictions, and at least he is prepared to say that this government has got the right approach when it comes to planning in Canberra.

Mr Snow wrote to me wanting it to be clearly understood that the views expressed by the MBA and the HIA in no way reflect the views of the private sector in the ACT. I would just like to read the letter for the information of members. Mr Snow says in his letter:

> Dear Simon
>
> I would like it clearly understood that the nonsense advertisement inserted in today's *Canberra Times* by the Master Builders' Association and the HIA and the Village Building Company in no way reflects the views of the private sector in Canberra.

He goes on to say:

> If this document was meant to somehow put pressure on the ACT Government to abandon its approach to planning and the forthcoming Spatial Plan, Social Plan and White Paper, then it should say so but it does not. They do not seem to have any constructive suggestions to offer for the benefit of our community.
>
> I believe that your Government is now, for the first time in many years, coming to grips, through the implementation of its policy on planning reviews, to give the Territory a sound basis to move forward for the next ten or fifteen years and, until that is in place, wholesale land release shouldn't be undertaken willy nilly. We would all like to see more land in the market, but not at any cost.

Mr Snow also says:

> From other comments in today's paper, we can understand why people call for robust action to get land into the market in parallel with solving the longer term planning issues, as your Government quite correctly identified.

Mr Snow concludes in this way:

> This advertisement, in my opinion, vindicates the action the ACT Government has taken in handling its own land releases and I encourage you to continue on your present course in the interests of a better Canberra for all.

> Yours sincerely
> Terry Snow
> Executive Chairman

I couldn't have said it better myself, Mr Speaker. I know that those in the departure lounge over there—the place you are when you want to be somewhere else, somewhere that's red, if you can get there—all 50 per cent of them, would rather not hear that sort of commentary. But it only reinforces in my mind, and in the mind of this government, that the government's approach on planning is endorsed by a wide section of the ACT community, not solely those—

Opposition members interjecting—

MR CORBELL: Mr Speaker, they have woken up now. Maybe it was the departure-lounge comment. The government's approach is endorsed not solely by those who want to get access to land but also by those in this city who understand the importance of strategic planning and who appreciate the long-term benefits that come from the establishment of government land development and an independent planning authority for the people of the ACT.

Yerrabi 2 estate

MRS DUNNE: My question is also addressed to the Minister for Planning, Mr Corbell. Minister, when you launched the Yerrabi 2 estate, you promised that the estate would achieve the goals of public-sector land development, better-quality design, environmental sustainability, choice for consumers and good economic outcomes for the territory. In the *Canberra Times* of 22 November, Mike Taylor considered whether the estate had met these goals and concluded that it had not.

Mr Stanhope: Whom was he writing for?

MRS DUNNE: I presume he was writing for himself, actually. He is a freelance journalist, after all.

Mr Stanhope: Yes, he's paid for it.

MRS DUNNE: Yes, by the *Canberra Times*. I will quote from his article, Mr Speaker.

MR SPEAKER: Order, members! Mrs Dunne has the floor.

MRS DUNNE: In his article, Mr Taylor said:

> On any objective assessment, the answer to those questions has to be no. With blocks costing between $140,000 and $180,000, it would seem that buyers are being asked to pay a premium, in some cases a $50,000 premium.

Minister, why has there been such an escalation in the prices of blocks at Yerrabi 2? Can you assure the Assembly that similar price increases will not be a factor in public sector land development in the future?

MR CORBELL: Mr Snow said, "They do not seem to have any constructive suggestions to offer for the benefit of our community." The same can be said for the shadow minister for planning. The simple answer is, Mrs Dunne, it is against the law. It is against the law to sell land for less than market value. I would simply direct Mrs Dunne to the land act. The land act says that you cannot sell land for less than market value, Mrs Dunne. It's against the law, Mrs Dunne.

If Mrs Dunne is advocating that the government break the law, she comes from the old school—the Bruce Stadium school. Maybe that is why they are in the departure lounge right now. It's easier in the Senate; it works really well up there.

But it is against the law to sell land for less than market value. The Gungahlin Development Authority cannot sell the land for less than market value, and the Gungahlin Development Authority is the agent of the government for this government land development policy in relation to Yerrabi 2. Mrs Dunne makes the assertion that there has been this amazing increase in land value just because the government entered government land development. Well, I don't know where Mrs Dunne has been for the past five years. I don't know what she's been doing, but, quite frankly, land values have gone up for the past five years. Indeed, it is not a trend unique in the ACT; it is a trend right around the nation.

Opposition members interjecting—

MR SPEAKER: Order! Members of the opposition will come to order.

MR CORBELL: I hear one of the candidates for the ticket out of the departure lounge, Mr Pratt, waking up over there. Mr Speaker, this is the man, by the way, who has been in the Legislative Assembly for only a year, and he decides he would rather be somewhere else. What about the people who elected you less than 12 months ago, Mr Pratt? What are you doing for them, Mr Pratt? Yes, I can see Mr Cornwell rubbing his hands—he can't wait to get his hands on the deputy spot over there. He will be a dynamic deputy leader of the opposition.

In response to the other part of Mrs Dunne's question, housing affordability is a key issue for this government and, unlike the previous government, we are taking concrete steps to address it. My colleague Mr Wood has been working closely with me and officers of Planning and Land Management in the development of a report on housing affordability in the ACT. That will be tabled, as I understand it, very shortly and that will outline the full suite of initiatives the government will then consider to address issues around housing affordability.

If land release is a potential mechanism, we will obviously use that. But, if it requires selling land at less than market value, it will require, Mrs Dunne, an amendment to the land act—as I am sure you would not want us to break the law.

MRS DUNNE: Mr Speaker, I ask a supplementary question. If Mr Corbell is so concerned about breaking the law, my supplementary question is: when the government released land to Community Housing Canberra recently in Gungahlin at less than market value, was it in fact in breach of the law?

MR CORBELL: No, because it was done consistently with a disallowable instrument.

Maternity services

MS TUCKER: My question is to Jon Stanhope as Minister for Health. Minister, in a useful meeting with officers from your department, Treasury and the insurance authority last month, your officers stated that the maternity services planning committee would be reconvened as soon as possible and would, among other things, focus on the mentoring model for developing capacity to offer home birth and to focus on the appropriate model of care for birthing. I understand that to date no meeting has been called. Given that this was promised as soon as possible, when will this meeting be called?

MR STANHOPE: Thank you, Ms Tucker, for the question, and I acknowledge your continuing interest in the issue of home birth. I have the same advice as you. I am not quite sure whether a meeting has been scheduled or when it will be held. The issue continues to be the non-availability of any reinsurance cover for home birth in the ACT. This is the issue that has been the stumbling block. I remain highly cynical and sceptical about that.

I share your view that, as I understand it, there has not been a single adverse incident or claim in a number of years of practice by home birth practitioners in the ACT, and yet our insurance industry in its cynicism has made an across-the-board decision or ruling to simply not insure midwives for home births at all. We have actively sought reinsurance cover to allow a home birthing system to be developed in the ACT. It has always been my desire and my intention to see home birth as an option for women in the ACT. I am not satisfied with the responses that we have received. We continue to pursue reasons and justifications and possibilities in relation to insurance and reinsurance.

We are not making any headway. Progress has been slow. We continue to make representations. I have not had a recent update on that, but I assume that we continue to have absolutely no positive responses from anywhere within the insurance industry. We have actually pursued models that we know apply elsewhere, particularly in Western Australia.

It occurred to us that, if there is a home birth service operating on essentially the same model as applies here in the ACT, then surely there is reinsurance available. Surely there is an insurance company providing that sort of support in those other jurisdictions that do provide a home birth service. But it transpires, we believe—and, of course, this was a challenge to us—that Western Australia perhaps runs the service without insurance. I have to say that, at this stage, that is not a risk I am prepared to take in relation to the size and quantum of insurance claims that we know can result from catastrophic injury at birth—accepting that there has never been a significant claim in relation to home births in the ACT.

I am frustrated by this, but the ACT's position remains as it is—that we are actively seeking to pursue the availability of home birth for women in the ACT wishing a home birth, a system that I would have been quite prepared to see run from Canberra Hospital. But at this stage this has stalled for want of insurance. I am aware that a meeting was, as

you say, postponed. I honestly do not know when it will be called, but I will make some inquiries about that.

MS TUCKER: Mr Speaker, I have a supplementary question. Thank you, Minister, for that answer. I think you may have just said this but I did not hear you properly. Can you assure the Assembly that you will make sure that the meeting of the maternity services planning committee occurs very soon?

MR STANHOPE: Yes. I will take advice on what is planned, Ms Tucker. But I have no issue around it being convened as soon as possible.

Australia Day Council

MR STEFANIAK: My question is to the minister for the arts and urban services, Mr Wood. Minister, for many years, the Australia Day Council in the ACT has run an excellent event in Commonwealth Park. I think those of us who have been members for a while are well aware of that. You, Minister, and a lot of other people have been to that event over many years. In previous years, successive governments have given that body funding towards the event.

The ACT Australia Day Council, headed by Marjorie Turbayne, applied for a grant some months ago. I understand they applied for a grant of $50,000. At the present time, they have not received confirmation as to whether their application has been successful and, if so, what they will be given. Given that Australia Day is only weeks away, time is running out.

Will you be giving the Australia Day Council in the ACT any assistance for this wonderful event?

MR WOOD: As to whether I am giving it, the answer is yes—there is support coming. I signed off the approvals last week. Yes, they applied for $50,000 and they are getting a very substantial amount. I expect the cheque is in the mail.

MR STEFANIAK: Mr Speaker, I have a supplementary question. When will they be advised? There are a number of events planned which are time critical. They need to know what they are getting, pronto, so that the event can go ahead. Mr Wood, when will they be advised? Will you undertake to contact them and advise them?

MR WOOD: I will deliver it myself! It was last week that I signed these things off. I would think it should be any moment. I would guess it is in the mail now—or that the process is under way.

Multicultural and community affairs brochure

MR CORNWELL: My question is also to Mr Wood, the minister for urban services. Minister, I refer to a brochure being distributed by the multicultural and community affairs group of the Chief Minister's Department. It relates to racial vilification. It states, as a suggestion—and may I say an extraordinary one:

> Contact your local parliamentary member and ask them to ensure they be vigilant in local libraries, community centres and vocal in the local press on maintaining tolerance and community solidarity.

It says:

> Contact your local parliamentary member and ask them to ensure they be vigilant in local libraries.

Are you aware of any instances where the ACT Library Service has promoted intolerance and community division? Do you consider it appropriate that MLAs be asked to act as censors to override a decision made by the ACT Library Service to put a book, magazine, newspaper or other materials on the shelves?

Will you be making a decision to remove all copies of Anna Sewell's book *Black Beauty* from the shelves, or culling perhaps the complete works of Shakespeare to remove *The Merchant of Venice* or *Othello*—consistent, as they would be, with the recommendations of this politically correct Chief Minister's Department? Have you seen the brochure, Minister?

MR WOOD: I think the question was: have I seen the brochure. No, I have not.

MR CORNWELL: Mr Speaker, I have a supplementary question. Minister, will you withdraw this pamphlet and have it reprinted—or will you ask the Chief Minister to withdraw it and have it reprinted—without references to MLAs in this house or, for that matter, other parliamentarians from Canberra in the federal parliament, acting as community censors in ACT public libraries?

MR WOOD: Mr Cornwell seems to be personally offended that there should be a suggestion that he ought to keep his eyes open as to what is happening in the community. I find the question remarkable and inconsequential.

Elective surgery waiting list

MS MacDONALD: Mr Speaker, my question, through you, is to the Minister for Health, Mr Stanhope. Can the minister tell the Assembly the number of people who were on the waiting list for elective surgery at ACT public hospitals at the end of November?

MR STANHOPE: Yes, I can, Ms MacDonald. I would like to give Mr Smyth advance notice of this, so he can steel himself for his press release congratulating the ACT government on the reduction in the waiting list.

I know the *Canberra Times* will want to put a good news health story on the front page. I know WIN news will want to place this as their first item, and I know the ABC will run it with prominence. It might be one of the two stories the ABC devotes to Canberra when the numbers are formally released.

I want to take this opportunity to allow Mr Smyth to start preparing his press release to congratulate the ACT government and to congratulate the Canberra and Calvary Hospitals for the reduction in the waiting list in our public system. Yes. Indeed, the numbers have dropped—it is great news—and we do have a great hospital system.

I want to take this opportunity to reflect on waiting lists—something very much in Mr Smyth's mind today—and the issues around the targets we should set and the force and influence we should accord to *Setting the agenda*. It is interesting to see, in a notable release from Mr Smyth today, that he continues to essentially abide by *Setting the agenda* —the Liberal Party's blueprint for health in the last term which led them to where they are—namely, on the opposition benches.

In respect of Mr Smyth's devotion to the waiting list, it is interesting to see what *Setting the agenda* says about the waiting list. What Mr Smyth's predecessor said on the subject of waiting lists is very much the matter of utmost moment in Mr Smyth's mind. Mr Moore was the author of *Setting the agenda*—a document which Mr Smyth has claimed over the past week or so, and indeed again today, is his bible in relation to health care and a health agenda. That document says on page 31:

> As far as possible, where additional dollars are available or where resources are freed up, these will be channelled into non hospital based services which provide alternatives to hospital treatment.

That is the basic philosophy. It goes on to say, at page 32—and it is almost as if Mr Moore had Mr Smyth in mind:

> Many people wrongly judge the performance of the public hospital system simply on its ability to deal with elective surgery, as reflected by the emphasis on elective surgery waiting times. In reality, the real measure of success of a public hospital is its ability to deal with emergencies—those patients where treatment is urgent and important. On that measure the ACT is a high performing health and hospital system...

This is the assumed wisdom. This is the bible according to Mr Smyth and Mr Moore. It goes on with this little pearl of wisdom:

> If you require elective surgery, the aim will be to treat you within clinically acceptable waiting times.

It continues—and this is thought provoking:

> However, emergencies will always take priority.

Are we not pleased to know that? This is deep stuff—"emergencies will always take priority". At page 33, Mr Moore goes on to say that the real measure of success for elective surgery was not waiting lists at all, but waiting times. He even said:

> This recognises that the length of a waiting list for elective surgery is largely meaningless unless it is related to clinical need. Rather the real measure of success... Relates to meeting clinically acceptable waiting times.

We do know, however—and Mr Smyth has reinforced it today—that the Liberal Party has set targets. Mr Smyth has done it today with a five or six-page detailed list of targets that he thinks we should achieve over the next 18 months.

As far back as 1995, in their push for the 1995 election, we remember the targets that were set. Mrs Carnell said that the Liberals would cut waiting lists for surgery by 20 per cent within three years. We know that waiting lists went up and up, to the point where, at the time Mr Humphries was Minister for Health three years ago, there were 1,000 more on the waiting lists than there are now.

Mrs Carnell went on about other targets. At that time, she promised to immediately open 50 new public hospital beds and to have 1,000 beds in public hospitals by the year 2000. Of course, when the Liberals lost the election, there were about 600. They were 400 short of the target they set. They set a target of 1,000 public hospital beds by the year 2000 and delivered 600. They reduced the number by a couple of hundred over the term.

Other things were promised. Mrs Carnell also promised a long-stay convalescent facility.

Mr Humphries: On a point of order, Mr Speaker: this is terribly interesting, but the question is: what is the size of the waiting list?

MR SPEAKER: Order! Minister for Health, resume your seat. Mr Humphries, what was the point of order?

Mr Humphries: What does this have to do with the size of the waiting list?

Mr Quinlan: Context.

Mr Humphries: It is all context and no substance. Where is the answer?

MR STANHOPE: They promised a long-stay convalescent facility. We delivered, but they did not. They promised a paediatrics ward for non-acute cases, but we are still waiting for that. They promised a medical clinic, and we are waiting for that. They promised nursing homes. They were going to build new nursing homes in Tuggeranong and Belconnen and we are still waiting for those. In fact, it is what you would call a waiting list—we are all still waiting.

We see now the new Smyth blueprint—the six pages of detailed targets. On Mr Smyth's first day as Leader of the Opposition in the Assembly, he tabled six pages of targets that are going to be achieved before June 2004. I have had indicative costings undertaken by the department of health, and I will have them confirmed by Treasury. The indicative costing by the head of the department of health is $200 million.

Brendan Smyth, on day one in the Assembly, wants to increase our expenditure of the entire budget by 10 per cent—$200 million on his first day in the office! That is responsible, measured leadership—real fiscal responsibility here from this new leader.—$200 million.

There are a couple of items which, of themselves, will cost $25 million to implement. He wants reductions in the waiting times and waiting lists, which the department has costed at $25 million, before June 2004. He wants a new detailed information system that has been costed at $25 million—that is $50 million in two items. Here is a new leader of the Liberal Party who wants to spend another $200 million in 18 months!

Mr Humphries: On a point of order, Mr Speaker: a bit less content and a bit more answer to the question would be nice. The question was: what is the size of the waiting list? None of this relates to the size of the waiting list whatsoever.

MR SPEAKER: I am sure the Chief Minister and Health Minister is just coming to the point.

MR STANHOPE: I am. We really need to reflect on the sheer irresponsibility of this. On his first day in the job, he is going to double it in 18 months—$200 million in 18 months. There are all these other things—the things he did not consult on, the things he did not prioritise, and all the little gems in here—the things that Greg Cornwell urged him to do.

Mr Smyth, how hard did Greg Cornwell and Bill Stefaniak have to twist your arm to get you to agree to introduce a needle exchange and an injecting room at Quamby? Mr Stefaniak and Mr Cornwell, how hard did you have to lean on him to include in this health statement today that there will be a needle exchange and a safe injecting room in Quamby, in the periodic detention centre, and at the BRC?

What do you think about that, as Attorney-General, Mr Stefaniak? Are you backing that to the hilt? You are backing that to the hilt, are you, mate? Greg Cornwell will back it! Greg Cornwell will back a needle exchange for criminals—as long as they are not from ethnically diverse backgrounds—for anybody out at the BRC or out at Quamby. Quamby will be a problem because half the kids out there are Aboriginal. I do not know what your view is on that, Mr Cornwell—needle exchanges in all of our detention facilities. I guess you cannot have a needle exchange—arming every single detainee with a lethal weapon. This is an interesting proposal!

Mr Humphries: On a further point of order, Mr Speaker: there is a rule about relevance, and none of this answer has yet provided for any relevance whatever to the question that was asked.

MR SPEAKER: I think the time for contextualising is over—you should come to the point.

MR STANHOPE: I will conclude on that note. It is remarkably irresponsible to suggest that, by June 2004, we are going to spend another $200 million on health. What are you going to cut? Are you going to close down the education department?

MR SPEAKER: Order! Minister for Health, resume your seat.

Bill of rights poll

MS DUNDAS: My question is for the Attorney-General. Mr Stanhope, considering your government's repeated commitments to involve and consult with young people, can you please explain why people under the age of 18 were excluded from the microcosm of the ACT that made up the participants in the deliberative poll on the bill of rights?

MR STANHOPE: That is a very interesting question, Ms Dundas—thank you for that. The deliberative poll was organised and arranged by Australia Deliberates whose principal, as you are probably aware, is Dr Pamela Ryan.

The ACT government was not involved in the administrative arrangements for the deliberative poll. The deliberative poll revolved around the identification of and contact with around about 800 randomly selected ACT residents over the age of 18. I did not question that. It is an interesting point that you raise.

In the context of the modus operandi of Deliberations Australia, perhaps they used the electoral roll. I do not know how the pollsters employed by Deliberations Australia made their random selections.

Perhaps the selections were made—I do not know, I am just postulating here as to how the cohort was randomly selected—either through the electoral roll or the phone book. I do not know the answer to that. If I could find out the answer to that, I could probably answer your question.

I heard Dr Ryan say yesterday that one of the interesting facts in relation to the age spread and the age differential through each of the age groupings, traditionally applied, was that there was an over-representation in the 18 to 24-year age group as against national per capita averages and that, similarly, there was an over-representation of people over the age of 55. The area in which there was the greatest under-representation was the age group from 34 to 55. It may be that those under the age of 18 were under-represented insofar as none were approached, so there were none within the group of randomly selected Canberrans.

MS DUNDAS: Mr Speaker, I have a supplementary question. Minister, can you please explain how young people and their rights will then be included in any ongoing discussions on the bill of rights, as to whether or not we have one and what it will be?

MR STANHOPE: It needs to be remembered that the deliberative poll was just one part of the extensive consultations which have formed part of the bill of rights considerations and consultations. The process has been going on for eight or nine months. There were well-advertised calls for public submissions and well-advertised notifications of public meetings. Each of the members of the consultative committee has now met with, appeared before and held discussions with dozens of ACT-based community organisations.

Consultation is difficult. That is why I was interested in the deliberative poll concept as an experiment, as a way of broadening and enhancing our methods of consultation. There is no doubt that the traditional methods of consultation—namely the call for public submissions, the holding of public meetings and the gathering of people together—

always leave some people dissatisfied. They always leave a sense that there are some within the community for whom that traditional method of consultation is not convenient. That is how all organisations and all governments have traditionally consulted—we know that. It is a flawed system. We know this through the Legislative Assembly committee system—how flawed the response is to particular inquiries, in quantity and quality of submissions and witnesses prepared to appear. It is something we need to continue to work at.

My colleague, Simon Corbell, has made significant moves to enhance the capacity of young people in this community to be heard. It is an issue that we, the government, take seriously and which Simon Corbell, as minister with responsibility for youth, has pursued assiduously. Without breaching any vital notions of cabinet confidentiality, Mr Corbell constantly raises with his cabinet colleagues the need—even around issues being considered by cabinet—for young people to be consulted. It is something we are mindful of and an issue we are vigorously pursuing.

Electorate offices—trial

MR HUMPHRIES: My question is to the Chief Minister. Chief Minister, you recently wrote to members, inviting them to take part in a trial of what you called electorate offices in each of the ACT's three electorates. The trial involves members spending two hours per month in each of these electorate offices. Can you tell us if your ministers will be participating in this scheme?

MR STANHOPE: I would hope so, Mr Humphries. The letter goes on to invite responses to a format—or a method of enhancing our capacity to consult with our constituents. This is something I have long felt is important—that we have the capacity to meet our constituents in our electorates. You could conjure up a whole range of formulas for seeking to achieve that, but we have put a mean, lean and minimal cost model on the table. I will be vitally interested in the responses I receive from members.

I certainly intend to participate. My ministers will respond for themselves, just as each member of this place will respond for himself or herself. As far as I am concerned, it is a very good start. I look for some innovative responses from all members of the Assembly.

MR HUMPHRIES: Mr Speaker, I have a supplementary question. Chief Minister, if your ministers are going to the trouble of travelling to these electorate offices once each month, will they go to the trouble of going to electorate offices in electorates other than their own?

MR STANHOPE: As I say, I am looking for responses, which are invited from members. It needs to be kept in mind that this is essentially around allowing members to meet with those constituents who elect them. It is a first for us, and something we have not done since self-government began. It is a good first move towards getting members of the Assembly out of this place and into their electorates.

Of course, as you are aware, my cabinet now meets once every six or eight weeks around the ACT. Just last week, we held a second, very successful community cabinet in Dickson. We will be meeting in Belconnen as a cabinet in early February, and in Weston

Creek in April. We certainly have every intention of doing that, and are moving innovatively through both the electorate office concept, which we have kicked off, and our community cabinet meetings, to ensure that we meet as broad a range of people as we possibly can from all around Canberra.

Mr Humphries: The question is: will they meet outside their electorates?

MR STANHOPE: These are matters to be negotiated by them. I am not dictating these things—just as I am not dictating to you that I think you need to accept this offer.

Senators have big, swish offices at the expense of taxpayers. It is probably an interesting subject for discussion, Mr Humphries, as you move on and upwards with 15 electorate staff.

Mr Humphries: According to you, Mr Stanhope, I do not have the numbers.

MR STANHOPE: As a senator, you will end up with more staff than the entire Liberal Party or Labor Party have in this place. Of course, being a backbench senator will not do. For a minister, no less, in the Howard government, goodness knows—the sky is the limit.

Bill and Steve, do not think, for a minute, I am denying you your chance to speak. I do not have any money on you, although there is a dark horse. I think there is a bit of a bolter out there from Belconnen, but I am having two bob each way on Bill—the "Belconnen folder". I have a feeling he could come up the middle, or whip around the outside where the ground is a bit firm—so keep your eye on him!

Industrial manslaughter legislation

MR PRATT: My question is to the Minister for Industrial Relations, Mr Corbell. Minister, given that the Bracks Labor government, with a clear majority in both houses, and the Beattie government with a strong majority in the Queensland parliament, have abandoned plans to introduce industrial manslaughter legislation, recognising that it is unnecessary and poor legislation, will you follow their lead and shelve your plans to introduce such legislation in the ACT?

MR CORBELL: I thank Mr Pratt for the question. Mr Speaker, I read this morning that the Queensland Minister for Industrial Relations, Mr Nuttall, has denied reports that the Queensland government has dumped its proposed industrial manslaughter legislation. I guess that proves the old adage that you can never believe what you read in the papers.

The Queensland Attorney-General has said that the report is incorrect. He has said today that it is still on the agenda. No deadlines have been set at this stage, but it is still on the agenda for the Queensland government. I cannot comment on what the newly elected Bracks government is going to do. However, if Mr Bracks wanted to introduce such legislation, I think he would have a pretty good chance of getting it through the houses of parliament in Victoria.

Mr Speaker, I am not especially interested in what other jurisdictions are doing, I am interested in what the Canberra community wants. The Canberra community wants to see legislation which ensures that employers who act in a reckless way which contributes to or results in the death of an employee are held accountable for it. I cannot believe that those opposite would want anything else.

MR PRATT: Mr Speaker, I have a supplementary question. Minister, why are you intent on promoting policies that will hurt small businesses in the ACT, when existing legislation covers all safety requirements, as well as creating dangerous legal quagmires? Why push businesses over the border?

MR CORBELL: Exactly how would this impact on small business, Mr Speaker?

Mr Pratt: Additional cost.

MR CORBELL: It is costly to ensure that people are not killed. Is that the problem, Mr Pratt? Is that what you are saying?

If it is the position of the Liberal Party that it is too expensive to ensure workplace safety, then they need to go back and do some basic lessons in the importance of protecting the lives of people in workplaces. If the only argument the Liberal Party can mount in this regard is that it is too expensive to ensure workplace safety, then your opposition spokesperson on industrial relations has a lot to learn, Mr Speaker—a lot to learn indeed.

Insurance crisis

MR HARGREAVES: Mr Speaker, my question through you is to the Deputy Chief Minister—the best Deputy Chief Minister we have had since Federation, I might tell you. My question relates to the government's response to the insurance crisis—a crisis caused by these people over here. Can the minister update the Assembly on the progress of negotiations for group buying arrangements—something in which we are all interested?

MR QUINLAN: Thank you, Mr Hargreaves. This is an important question that the government—and all governments in Australia—has wrestled with over the past year or so.

Two weeks ago in this place, I announced that the government had reached agreement in principle with a group insurance provider to provide much-needed public liability insurance cover to ACT non-profit and community groups. The ACT will be the first jurisdiction, along with New South Wales, to receive this scheme. That, Mr Speaker, is real action.

I noted, that, in his first speech as leader, Mr Smyth talked about that dog's breakfast he brought before this place as being the only initiatives before the Assembly in relation to insurance.

This government has brought in the Civil Law (Wrongs) Bill. This government has been active within ministerial councils, working through this problem in a fashion that will bring real results. We have been working on our own part to bring real results at the grassroots level here in Canberra.

Remembering that we are two per cent of the Australian insurance market and that the Australian insurance market is two per cent of the world insurance market, we do not have a lot of clout. However, the people within the ACT administration have worked mightily to bring this about, and deserve every credit for what will be brought into play.

Of course, because of the current insurance market, the significant variable in all of this is ACCC approval. The Australian Competition and Consumer Commission has announced that the group insurance scheme proposed by Allianz Australia, QBE Insurance and the NRMA Insurance owner, Insurance Australia Group, can collectively offer insurance under an interim authorisation—so we have gone over the ACCC hump. The interim authorisation also allows the insurers to collectively offer public liability insurance to not-for-profit organisations. The ACCC has made the right decision, and this government has argued that this product will serve to enhance competition, not restrict it.

Already Suncorp Metway has trialled a similar product in Queensland, as Queensland plays catch-up to the initiative on foot in this territory. This will provide relief to the most needy segments of our community.

We have all heard of organisations with a zero claims history which have still not been able to obtain insurance cover. This insurance will be priced according to real risk, and will put an end to national or international pricing which precludes people who have adequate risk plans and minimal claims history who still cannot find insurance cover.

The scheme will be launched in the ACT as soon as it is available, and will provide immediate access to all of those organisations that are yet to find cover. I might add that there are quite a number of organisations which have already got cover because of the insurance authority within the ACT—because we have been the go-between, because we have been able to put not-for-profit and sporting community organisations in touch with insurers when they were unable to find one.

There are very few areas in the ACT that do not have cover today. There are still some, but only one or two. We are also operating a risk advisory website, which enables groups to construct and rate their risk profiles, and to abide by Australian Standards to make their risk plans comply, in order to qualify for cover.

Mr Speaker, what I really want to say is that I thought the shallow claims of the new Leader of the Opposition in relation to his dog's breakfast—shallow claims that are more than paralleled by the shallow claims he has made in relation to health—indicate that this guy has a long way to go and a lot of experience to gather in a very short space of time.

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

Housing—maintenance

MR WOOD: Mr Speaker, I have a follow-up to a question. On 19 and 21 November, Mr Cornwell asked me questions about how maintenance requests were communicated by ACT Housing tenants. I will give a fuller answer.

An integral aspect of the total facilities management concept, or TFM, introduced in July 2001—note the date—is the provision of a call centre for receiving and processing maintenance requests. It operates on a 24 hours per day, seven days per week, basis. Tenants are encouraged to direct their maintenance inquiries through this facility, so that all issues can be coordinated and progress monitored.

As part of the handling of inquiries, each of the two TFMs—north and south—provides a fax service for handling maintenance inquiries from tenants who cannot use the phone. ACT Housing sometimes receives maintenance requests directly from tenants. All those requests are forwarded to the TFM centre for processing. Maintenance works identified by housing managers during annual visits are also forwarded to the call centres.

Both TFMs have reconfirmed that suitable alternative arrangements are available for tenants who have difficulties in using the telephone service. ACT Housing will ensure that additional measures are taken to advertise the availability of the fax service and the email addresses in the call centres. An article on this subject will appear in the next newsletter.

ACT Housing contractors understand their obligations under the access and equity principles. The TFM contract includes a code of conduct which addresses the issues of access and equity with regard to its client.

Watson High School building

MR QUINLAN: On 30 August this year Ms Tucker, during question time in the Assembly, asked me some questions relating to the management of the old Watson High School building. The answer has been separately advised to Ms Tucker, and I now ask for leave to have the answer incorporated in *Hansard*.

Leave granted.

The answer read as follows:

MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY

QUESTION WITHOUT NOTICE TAKEN ON NOTICE

Canberra Technology Park

MS KERRIE TUCKER - Asked the Minister for Economic Development, Business and Tourism during question time, without notice on 30 August 2002:

- What is your government's position on management of Watson High School building? Have you done the work to show that in fact it's cheaper for you to hand over management of the building in this way, considering that you are actually subsidising the rent to such a large degree of one of the organisations.
- Could you give the Assembly details of exactly what the discount is that is offered to various organisations and what the market rent is, and also what the current landlord is spending on maintenance of the building. What's the condition of the building and what maintenance has occurred there?

MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM - The answer to the Member's question is as follows:

Mr Speaker,

I refer to Ms Tucker's question without notice taken on notice regarding the rent and management of Watson High School building, rent paid by sub licensees, condition of the building, and current landlord spending on maintaining the building.

Canberra Institute of Technology (CIT) on behalf of the Territory, and on the basis of a pre-existing arrangement with the Academy of Interactive Entertainment to provide training, licensed the Academy in April 2001 to use the old Watson High School.

The License Agreement allows the Academy to:
- provide education and training in conjunction with CIT; and
- through its Canberra Technology Park division, develop a local multimedia and interactive games industry by encouraging graduating students to start their own businesses in the field.

Canberra Technology Park is designed to lever the opportunity provided by the Academy of Interactive Entertainment to train students not only in computer-aided animation but also in business development. The Academy is a not-for-profit organisation, and I understand that the business incubation side of the Academy is operating at a small loss.

The Academy has an international reputation as an innovative cluster and developer of small to medium multimedia companies. As an indication, the Academy has trained over one-third of Australia's computer games industry requirements since 1996. Academy management informs the Government that the Academy recently received offers from both the Queensland and Victorian Governments to relocate its operations to those states.

Canberra Technology Park now houses spin-off companies from the Academy, synergistic multimedia companies, as well as community focussed organisations mainly in the educational and IT-related sectors.

Community focussed tenants include Canberra City Church, ACT Disability, the Aged and Carer Advocacy Service, and the Mental Health Foundation. The License Agreement allows for such occupancy subject to CIT approval. CIT has indicated it will limit such tenants to 25% of the Academy's floor space. In accordance with this, in December 2001 the Academy agreed to Blue Gum School operating at CTP on a short-term basis, allowing the school time to find a permanent site.

All Canberra Technology Park tenants, including the community focussed organisations, pay market rental and there is no discount offered to any tenants. The rent varies only where the state of space occupied is of lesser quality, as is the case with any commercial tenancy agreement.

If an individual tenant requires a special fit-out to adapt the leased premises for a specific use, then this fit-out is undertaken at their cost (as it is in most commercial leasing agreements), and the agreed gross rental rate reflects this.

The Academy is obligated to pay 10% of its gross rental income to CIT as a licence fee. The gross rental income from which the 10% is calculated includes all revenue gained from tenants including revenue obtained to pay all costs associated with running the site. The percentage payable rises to 15% from 1 July 2003 for subsequent years of the agreement.

On the matters of condition of the building and maintenance, the Academy judges the building's condition as "reasonable", given that it is an old building. The Academy believes that the premises are safe and habitable for general office specifications and use. Where they have been found to be otherwise, the Academy has undertaken to make them so.

The ACT Government provided $100,000 from the 2001/02 budget for refurbishment of Canberra Technology Park. The Academy advises that last financial year it spent over $350,000 (including the abovementioned $100,000) in repairs and maintenance, refurbishment, purchase of equipment, general running costs and upgrading lifts, fire systems, and the security system.

The issue of locating community uses at CTP and at other Government-supported business facilities is being examined through the ACT Economic White Paper, with a view to ensuring that Government investment in business development remains targeted.

Education costs

MR CORBELL: Mr Speaker, on 14 November, Ms Dundas asked me a question about the average cost per student of extra-curricular activities in public schools in the ACT.

I advise Ms Dundas and members that, due to the variety of courses offered at schools and the individual choices students make, it is impossible to give an average cost for extra-curricular activities or elective subjects. However, schools generally request a fee for courses such as photography, ceramics and other such courses to cover the cost of the materials supplied. Consideration is given to students who have difficulty meeting the

costs. Extra-curricular or elective fees, like all school fees, are voluntary in ACT public schools.

Papers

Mr Stanhope presented the following papers:

Remuneration Tribunal Act, pursuant to section 12—Determinations, together with statements for:

Chief Magistrate, Magistrates and Special Magistrates—Determination No 111, dated 27 November 2002.

Master of the Supreme Court—Determination No 112, dated 27 November 2002.

Chief Justice of the Supreme Court—Determination No 113, dated 27 November 2002.

President of the Court of Appeal—Determination No 114, dated 27 November 2002.

Part-time holder of public offices (Advisor to the Conservator)—Determination No 115, dated 27 November 2002.

Executive contracts

Papers and statement by minister

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

Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—

Long term contracts:

Hamish McNulty, dated 2 December 2002.

Yew Weng Ho, dated 18 November 2002.

Short term contracts:

Mandy Hillson, dated 29 November 2002.

Diane Kargas, dated 18 November 2002.

I ask for leave to make a statement.

Leave granted.

MR STANHOPE: Mr Speaker, these contracts are tabled in accordance with sections 31A and 79 of the Public Sector Management Act. The details are being circulated.

Paper

Mr Stanhope presented the following paper:

ACT Public Hospitals—1st Quarter 2002-03—Service Activity Report, December 2002.

2003-2004 budget consultation
Paper and statement by minister

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections): Mr Speaker, for the information of members, I present the following paper:

2003-2004 Budget Consultation

I ask for leave to make a short statement.

Leave granted.

MR QUINLAN: Mr Speaker, the government welcomes a high degree of community participation in the decision-making processes. We also welcome, let me say, a high degree of understanding and appreciation of the processes and the limitations within the construction of a budget. This, of course, assists government in achieving equitable outcomes for all members of the ACT community. The government is conscious of the need to provide a responsible budget in tune with community needs.

The government has undertaken to increase the transparency and openness of the decision-making process through the continued use of the budget consultation process. This process provides an opportunity to the ACT community to communicate with the government prior to the finalisation of the territory budget. The purpose of the consultation process is to assist government in the development of its policies that reflect the needs and priorities of the community. Information derived from this process will help to determine the direction of the 2003-04 budget.

To assist the consultation process, I have tabled the budget consultation document to aid the debate on budget issues and priorities. Essentially, the information provides an overview of the territory's financial position as a backdrop against which the 2003-04 budget will be set. The purpose of the document is to promote improved information about the major issues currently facing the ACT and thereby assist the government to develop relevant and timely policy which best reflects the overall needs and interests of the territory.

The document will be sent to all major community and business groups. It will also be available on the government's consultation website and the Department of Treasury website. With the document will be an invitation for the provision of submissions for the budget to be provided to government.

The budget forecasts within the consultation document have been revised downward, mostly due to the poor performance of superannuation-related market investments. This government is committed to making financially sound decisions. In this context, we welcome suggestions that are mindful of the constrained financial environment.

Similar to last year's process, I wish also to formally invite the standing committees of the Legislative Assembly to participate in the budget community consultation process through self-referral of the relevant committees. The government will not compel Assembly committees to be involved in the consultative process and will not dictate terms of reference to the committees. The decision to be involved in the budget consultation process lies with each standing committee.

The flexibility provided with regard to the terms of reference will give committees sufficient scope to conduct qualitative assessments on issues of service delivery within policy areas. However, to be useful to government in considering the budget, the committees will need to report by 7 March 2003.

The government encourages debate on spending and service priorities and hopes that the Assembly committees will choose to participate, along with community and business groups, in the process. As Treasurer, I will be writing to committee chairs to invite the committees to self-refer and participate in the consultative process.

Ministerial visit to the US and UK—September 2002
Paper and statement by minister

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections): Mr Speaker, for the information of members, I present the following paper:

> Ministerial Visit to the US & UK—September 2002.

I seek leave to make a short statement.

Leave granted.

MR QUINLAN: Mr Speaker, the purpose of the visit to the US and the UK was to visit cities that had demonstrated an ability to create an expanded economic base while at the same time adopting sustainable policies for city growth. The cities visited between 3 and 13 September were Austin, Texas; Wichita, Kansas; Washington, DC; London, UK; and Cambridge, UK.

The major benefits of the trip were, first of all, the understanding of how cities like Austin and Wichita have combined the efforts of government and business to build sustainable growth. Let me say that it is now my firm conviction that any city that wishes to consciously grow its economy, particularly in knowledge industries, has to work very hard and has to involve the various sectors within the city, particularly academe and business, in that development. It is not sufficient for government just to be involved in a couple of high-profile assistance efforts but not to be actually consciously involved.

It is clear that there is a great need for business itself to be involved in the fostering of innovation and entrepreneurship. The memorandum of understanding signed with the Wichita State University and between the Wichita State University and the University of Canberra will, in fact, progress that development in the ACT. We have recently seen the University of Canberra open its innovations centre. Let me tell you that the Wichita university is really a centre of innovation, which sounds crazy as it is a place out in the mid-west of the US.

Mr Stefaniak: Did you see the Wichita linesman?

MR QUINLAN: We didn't see him, but we certainly visited the first ever Pizza Hut, Bill, and met the guy that actually started that franchise. The man who started that franchise is still working with students within the university, encouraging innovation and entrepreneurship. In a number of areas, the Wichita State University, which also hosted our Cannons coach, Cal Bruton, is a leader in terms of the fostering of innovation and entrepreneurship and as an innovation centre, as is the University of Cambridge. They are generally managed by business people—not academics, not government representatives, but the business people of the region.

We visited Washington. The Greater Washington Initiative is, of course, bigger than what we might build in the ACT and call Business ACT. Nevertheless, it is doing the same thing on a grander scale. It is a conduit between business and major administration and major defence administration. We are well on the way to building a long-term relationship with the Greater Washington Initiative because we have so much in common and because Australia and Canberra are recognised as being very good—up there with the best of them—in terms of research and breadth of thinking.

We saw a similar model, I guess, but run in a British fashion in Cambridge, which also has an innovation centre. It is run by a Porsche-driving businessman, not an academic, and it has virtually got talent scouts on the campus chasing future entrepreneurs and innovators.

I think the visit demonstrates emphatically that there are actions that government can initiate to improve and grow innovation and entrepreneurship in their economies, but they can't do it alone, and we will be seeking greater interaction between universities, business and government in pursuing developments in the ACT. We will be pursuing links with the Greater Washington Initiative. We will be pursuing formal links with the London Development Authority, with which we also had very constructive engagements. If we all take a positive view on this development process, the future of Canberra will be nothing but sensational. We really do have the embryo here of a very successful knowledge economy and an economy that can develop in today's world and tomorrow's world.

Paper

Mr Wood presented the following paper:

> Cultural Facilities Act, pursuant to section 29 (3)—Cultural Facilities Corporation—Quarterly Report (for the First Quarter 2002/2003: 1 July to 30 September 2002).

Indigenous education—fifth six-monthly report
Paper and statement by minister

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations): Mr Speaker, for the information of members and in accordance with the resolution of the Assembly of 24 May 2000, I present the following paper:

> Indigenous education—Fifth six-monthly report to 31 August 2002.

I ask for leave to make a statement.

Leave granted.

MR CORBELL: Mr Speaker, I am very pleased to present the fifth sixth-monthly report on performance in indigenous education. The report covers the period from March 2002 to 31 August 2002. Mr Speaker, the Labor Party, through you, initiated this reporting in 2000. Four reports have been tabled since then and the government is pleased to continue this reporting.

The continued commitment of the government to improving educational outcomes for indigenous students is reflected in the initiatives and programs in place. The government recognises that many of the needs of indigenous students can be addressed through support programs for all students at risk of not achieving satisfactory outcomes. There are additional needs that the government recognises require targeted assistance.

While much is being achieved in improving outcomes for indigenous students, there is still a considerable gap between the performance of indigenous and non-indigenous students. Setting up and implementing programs that will close the gap in outcomes between indigenous and non-indigenous students is the priority of the government.

Mr Speaker, I would like to draw to the attention of members a number of key elements of this report. Firstly, the government has committed $787,000 over the next four years to improve services to indigenous students and their families. In the 2002-03 financial year, $190,000 is allocated above the previous level of funding. The initiative will improve the home school liaison services to indigenous students, their families and schools by establishing an additional nine home school liaison positions.

The home school liaison officers will work with indigenous students in schools and pre-schools, assisting with program delivery. They will focus on attendance issues and literacy and numeracy performance as part of their core activity. They will provide a crucial link between the school and home. The increase in the number of liaison officers will allow an improved support service to be provided to indigenous families with children in ACT government schools.

To be able to improve the quality of the services, the home school liaison officers will need appropriate training. All indigenous home school liaison officers will be provided with training at the certificate IV level in governance and indigenous affairs. In addition to these position, there will be two new indigenous education support officer positions. These officers will supervise the work of the home school liaison officers, manage any

critical incidents that are beyond the scope of the home school liaison officers, and provide executive support to the manager of the indigenous education unit.

Secondly, in relation to indigenous student outcomes, the attendance rates for indigenous and non-indigenous students in primary schools show no significant difference. The gap between indigenous and non-indigenous students in high schools is still a matter of serious concern. The budget initiative mentioned earlier will assist in decreasing this gap through providing additional support to follow up cases where indigenous students attendance is not satisfactory.

Indigenous students continue to enter kindergarten with lower initial skills in literacy and numeracy than non-indigenous students. More research needs to be carried out to identify the reasons for this. Improving pre-school services to indigenous students may be achieved by building on the success of the program.

The ACT assessment program has been completed for this year. The results will be available for the next report to the Legislative Assembly. Indigenous students in the primary school years participated at about the same rate as non-indigenous students. In the high school years the gap between the participation rates for indigenous and non-indigenous students was greater. The new support structure will enable better communication with students and family that will include emphasising the importance of students participating in the assessment program.

Thirdly, in relation to vocational education, this is the first report to the Assembly that has included vocational education. Indigenous students are benefiting from these opportunities to develop vocational skills while in years 11 and 12. Indigenous students are enrolled in a variety of vocational education courses, with hospitality and automotive technology being popular.

Fourthly, in relation to human resources, increasing the level of indigenous staff in the ACT Department of Education, Youth and Family Services continues to be a high priority. The teacher recruitment round for 2003 has been completed, with an increase in the number of indigenous teachers applying. I am hopeful that the target of three additional indigenous teachers will be met.

Linking the services provided across the department and with other government departments is essential so that indigenous students and their families get the best possible support. The indigenous education budget initiative is designed to link in with other government initiatives, such as the high school development program and the indigenous youth alcohol and drug project.

Finally, Mr Speaker I would like to emphasise the importance of this report. It demonstrates that the government's initiatives and programs are starting to address the needs of indigenous students and their families. I look forward to continuing to work with both the department and the broader ACT indigenous community and the indigenous education consultative body to ensure further improvement in the performance of indigenous kids in our schools. I commend the fifth six-monthly report on indigenous education to the Assembly.

MR PRATT: Mr Speaker I seek leave to make a statement in relation to this report.

Leave granted.

MR PRATT: Mr Speaker, I rise to say that I think that, generally speaking, this is a fairly good report and we welcome the indications that have been reported there, but I would make a couple of points. I do not think too much needs to be made of the declining standards in year 5, as is reported quite clearly in this report. The gap between indigenous and non-indigenous children, for the most part, is narrowing. That is a welcome sign and a positive sign that perhaps we should dwell upon. But I would urge the department to monitor more closely the progress of that particular cohort group, that is, the reported year 5 class. Let's see how they perform at the next report.

I would like to make the observation that I believe that a very important activity is not being qualitatively reported upon in this report, that is, the issue of the indigenous education compact which is handed out to parents and the encouragement and involvement of those parents in schooling activities. I believe that the Assembly and the community need to know how successful the department and the schools are in developing this vital connection.

Parental involvement is a strong requirement in the endeavour to strengthen indigenous education. It is a fundamental part of getting our indigenous students completely included within the community and of encouraging them to move on to stronger endeavours. Let me quote a man whom I believe is one of this country's most credible spokesmen on indigenous affairs, one who has demonstrated a strong interest in youth affairs. I talk of Noel Pearson, who stated the following in a recent report:

> … we need to engage Aboriginal parents in the education system.
>
> Parental and wider family involvement in the education system in the communities is an area that is ripe for new ideas and new approaches.

He is perhaps speaking about more isolated communities, but I do think that these concepts can be applied in the ACT. Noel went on to say:

> Making the school a focal point for the community, through the involvement of community members and the development of adult education programs, would underscore the primary importance of education for the future of the community. It would boost children and attach value to education, both for children and their parents.

There is a man who quite knows the challenges posed by this vexed issue of getting our indigenous children back to the levels they ought to be on and closing the gaps much more tightly. Indeed, Mr Speaker, perhaps this model could be applied across the ACT community to all children at risk, non-indigenous as well as indigenous, providing the ability to engage and connect with their parents and get their parents involved in the schooling system. In conclusion, while I think the report is generally fine, I would like to see more qualitative reporting on other fundamental issues, particularly the issue I have raised this afternoon of the ability of the education department and its schools to successfully engage with indigenous parents.

Therapy services for students with a disability
Report of the review—government response

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services) (4.07): For the information of members, I present the following report:

> Report of the Review of Therapy Services for Students with a Disability—Government response, dated December 2002.

I move:

> That the Assembly takes note of the paper.

Mr Speaker, I am pleased today to table in the Assembly the government's response to the report on the review of therapy services for students with a disability. Our response marks both an end and a beginning for the way in which we deliver therapy services in the ACT. It is the end of an exhaustive process of inquiry, assessment, consultation and recommendation and it is the beginning of an improved level of service delivery to those in our community who have unique needs.

As background, the previous government agreed that a review of therapy services for students with a disability would be undertaken to address recommendations made in the report into educational services for students with a disability released in 1999. Last year the successful tenderers, Jill Cameron and Associates, were engaged to conduct the review.

In February 2002 the Chief Minister released their report and requested that the disability reform group provide a formal response to the findings. This was delivered in June and substantially informed the government's response to the review, so you can see that there has been a very long process here. In general, the government accepts the recommendations of the review of therapy services for students with a disability. I believe that it is pleasing that the government's views on the recommendations largely accord with those of the disability reform group.

A number of key issues are highlighted in the report, and these are currently being addressed by government. Specifically, the review recommends that there be a single government service provider of therapy services. Now that the therapy services provided by CHADS and Disability ACT reside in the new Department of Disability, Housing and Community Services, a project has commenced to consider the formation of a single therapy service in the new department.

This new service would provide a seamless therapy for students with a disability and would address many of the service delivery and planning issues raised during the consultation process. The new service would also meet the review recommendation that the current therapy services continue to be provided predominantly by the government. Indeed, the Department of Disability, Housing and Community Services has already undertaken public consultation on combining therapy programs from the two agencies into the one service. I am advised that informal feedback from the DRG is supportive of

the process being undertaken. I am committed to consulting with the community as we progress the model for a single therapy service.

The review also suggests that the feasibility of establishing a students with a disability advisory council be investigated. We recognise the importance and value of having students with disabilities in an advisory role. We feel, however, that this would best be achieved by having students on an advisory committee which includes wider representation from government and non-government organisations, parents, carers and the community.

There are two points of difference between the DRG's response and the government response to the review. The first relates to an acceptable definition of students with a disability. The review recommends that the Commonwealth's definition be adopted. The DRG rejects this definition on the grounds that it may restrict access to services for children with development delays. The government is committed to working with the DRG to establish a set of criteria for access to therapy services that are inclusive of all children with developmental delays and disabilities.

The second point of difference relates to the age at which service to students with disabilities should transfer to adult services. The DRG is of the view that the cut-off age should be 20. This would no longer be an issue with the implementation of a single therapy service. A single service would ensure that eligible children, young people and adults have access to therapy services.

One of the strengths of this review was the consultative mechanism employed throughout. The government has worked closely with people with a disability and the wide range of stakeholders, including representatives of government and non-government agencies, disability and parents organisations. The consultants utilised a steering committee, a reference group, questionnaires, meetings, forums and workshops to gather information and feedback. In this regard, I am confident that the report's recommendations are representative of the views of the community. I give my thanks to everybody involved in the process for their dedication to this important task.

Mr Speaker, the government has demonstrated in its response to the review of therapy services for students with a disability its commitment to the provision of quality services for our young people with a disability. The commitment will continue into the future as we work in close consultation with the disability sector and wider community to achieve our shared goals.

Question resolved in the affirmative.

Petitions—out of order

Mr Wood presented the following papers:

Petitions which do not conform with the standing orders—

Number of MLAs in the Assembly—Mr Stefaniak (267 citizens).

Dedicated driver training and motorsport complex—Mr Quinlan (581 citizens).

Subordinate legislation

Mr Wood presented the following papers:

Legislation Act, pursuant to section 64—

Domestic Violence Agencies Act—

Domestic Violence Prevention Council Appointment of Chairperson 2002-2004—Disallowable Instrument DI2002-196 (LR, 28 November 2002).

Domestic Violence Prevention Council Appointments 2002-2004—Disallowable Instrument DI2002-197 (LR, 28 November 2002).

Electricity Safety Act—Electricity Safety (Fees) Revocation and Determination 2002—Disallowable Instrument DI2002-198 (LR, 21 November 2002).

Health Professions Boards (Procedures) Act—

Health Professions Boards (Procedures)—Pharmacy Board of the ACT 2002 (No 1)—Disallowable Instrument DI2002-199 (LR, 18 November 2002).

Health Professions Boards (Procedures)—Dental Board of the ACT 2002 (No 1)—Disallowable Instrument DI2002-205 (LR, 28 November 2002).

Hotel School Act—Hotel School Appointment 2002 (No 2)—Disallowable Instrument DI2002-201 (LR, 21 November 2002).

Housing Assistance Act—Public Rental Housing Assistance Program Amendment 2002 (No 1)—Disallowable Instrument DI2002-214 (LR, 6 December 2002).

Liquor Act—Liquor Amendment Regulations 2002 (No 1)—Subordinate Law SL2002-32 (LR, 12 November 2002).

Magistrates Court Act—Magistrates Court (Utilities Infringement Notices) Regulations 2002—Subordinate Law SL2002-34 (LR, 21 November 2002).

Residential Tenancies Act—Residential Tenancies—Tribunal Selections 2002—Disallowable Instrument DI2002-194 (LR, 14 November 2002).

Road Transport (General) Act—Road Transport (General)—Declaration that the road transport legislation does not apply to certain roads and road related areas 2002 (No 7)—Disallowable Instrument DI2002-195 (LR, 14 November 2002).

Road Transport (Offences) Regulations 2001—Road Transport (Offences) (Declaration of Holiday Period) Determination 2002—Disallowable Instrument DI2002-206 (LR, 28 November 2002).

Supervised Injecting Place Trial Act—Supervised Drug Injection Trial Advisory Committee Appointments 2002 (No 1)—Disallowable Instrument DI2002-193 (LR, 14 November 2002).

University of Canberra Act—University of Canberra—Courses and Awards Amendment Statute 2002 (No 2)—Disallowable Instrument DI2002-202 (LR, 25 November 2002).

Utilities Act—

Utilities (Water Restrictions) Regulations 2002—Subordinate Law SL2002-33 (LR, 21 November 2002).

Utilities Act (Electricity Full Retail Competition Public Awareness Campaign) Ministerial Direction 2002 (No 1)—Disallowable Instrument DI2002-200 (LR, 21 November 2002).

Utilities (Approval of Variation of Industry Code) 2002 (No 1)—Disallowable Instrument DI2002-204 (LR, 28 November 2002).

Utilities (Water Restrictions) Regulations 2002—Water Restriction Scheme Approval 2002—Disallowable Instrument DI2002-203 (LR, 22 November 2002).

Public rental housing assistance program

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services): Mr Speaker, I seek leave to make a short statement about one item.

Leave granted.

MR WOOD: Mr Speaker, amongst this subordinate legislation is an amendment which I have approved to the public rental housing assistance program. This amendment restores security of tenure to all public housing tenants. It fulfils an election promise of the Stanhope Labor government.

The former government put in place arrangements requiring the Commissioner for Housing to review the income and assets of public tenants every three to five years. Those tenants who did not meet the eligibility criteria at the time of the review faced having their tenancies terminated.

With some exceptions, tenancies signed on or after 1 January 2001 were affected. Public housing tenants were thus discouraged from improving their financial situation by actively or fully engaging in the workforce. This is a classic poverty trap. More than this, those tenants who continued to meet the income and asset requirements were facing the threat of being compulsorily transferred to smaller housing if their family circumstances were found to have changed.

With this amendment to the program, the government has now moved to get rid of these review arrangements. ACT public tenants can now have confidence and peace of mind to plan for the future, knowing they have a permanent home. They can actively seek work or better jobs without fear of having their houses withdrawn. In the new year, I propose to bring forward further reforms to improve the way public housing assistance is provided to people in need in the ACT community. This will include further changes to

the public rental housing assistance program, as well as the introduction of a new rental bonds program to assist people in need to access rental housing on the private market.

I commend to this Assembly these current amendments to the program.

MR STEFANIAK: I seek leave to say something in relation to the last matter raised by Mr Wood.

Leave granted.

MR STEFANIAK: I will have to look at exactly what Mr Wood is proposing there, but I would make the observation that we do have a crisis—the minister's own words—in public housing at present and we do have a waiting list which was around 3,000 or a little under that, I think, some 12 months ago, but is now up to 3,400. I am not going to comment further, Mr Speaker, without looking in detail at what Mr Wood is proposing. I note that the document has not been circulated. I will need to go and look at the determination. At this stage, I just wanted to make those comments. It is probably appropriate that I move for the debate on this matter to be adjourned.

MR SPEAKER: There is no question before the house, Mr Stefaniak, so such a motion would have no relevance.

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services) (4.18): I present the following paper:

> Public Rental Housing Assistance Program—Amendment to restore security of tenure to public tenants—Statement by Minister.

I move:

> That the Assembly takes note of the paper.

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

Water resource strategy
Ministerial statement

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services) (4.19): Mr Speaker, I ask for leave of the Assembly to make a ministerial statement concerning the development of a water resource strategy for the ACT.

Leave granted.

MR WOOD: Mr Speaker, on World Environment Day in June, the Assembly passed a significant motion, at the instigation of Ms Tucker, about water management in the ACT. It called on the government to develop a water conservation and re-use strategy to ensure that the water needs resulting in any increase in population can be met as far as possible within existing capabilities.

I am now reporting back to the Assembly, indicating progress on that motion. This is a reporting stage. We have assembled the bare bones now—the framework of that strategy—and that can be further developed over the next period. The paper I am presenting includes a comprehensive response to the important issues raised by the motion, and I am speaking to that now.

With drought affecting much of the country, water has become a highly important issue in the minds of both the government and the community. For the first time in 35 years the ACT is under voluntary water restrictions, and it will not be long before it faces compulsory restrictions.

While the current situation is quite serious, it is important to put our water management record in perspective. Canberra is the largest inland city in Australia and also the largest city in the Murray-Darling basin. We experience the full gamut of water resource management issues that occur in other parts of Australia, although our focus is very much on water resources in an urban setting.

We use our water bodies every day of our lives, relying on them for drinking water, recreation and supporting our abundant wildlife and landscape. Water is critical to our economic security.

Canberra has a long history of being a world-class urban water manager, pioneering stormwater treatment in the 1970s, controlling erosion and sediment control in building sites in the 1980s and introducing the water abstraction charge in the 1990s. The 1990s also saw us protect environmental flows, which contribute significantly to the health of our water bodies and the waters downstream from us.

As Ms Tucker desires, we now have an opportunity in this decade to lead the way in water conservation and management, and it is timely that the United Nations has proclaimed next year, 2003, the International Year of Freshwater. Sustainable water use is a problem that is being tackled globally.

A key element of the Assembly motion is to avoid, as far as possible, the building of further water supply dams in the ACT. It is certainly this government's aspiration to avoid the building of another dam, particularly given the current cost estimate for a new dam of about $200 million. We need to continue taking a series of small steps, with the expectation that we continue to improve our water management until those steps have grown large enough to avoid building that dam.

In addition to the overarching issue of high demand for limited resources, major issues to be tackled in the future include managing competing uses of water resources, such as recreation versus consumption; restricting pollution from urban run-off; and absorbing the impact of growing economic, regional and urban development. The fundamental challenge will still be to reduce the amount of potable water we use.

There are various things going on in concert as we develop this strategy. Actew is undertaking a world benchmark study into the whole water cycle to identify options for optimising water use.

We currently use only a small amount of the treated effluent we produce, so we need to think about how significantly to increase this amount. In the longer term we need to make significant changes to our buildings—commercial and domestic—re-use waste water, capture rain water and use limited potable water. We need to improve the efficiency and effectiveness of our water management practices.

We also need to be fully aware of external pressures on our water resources. We are facing the establishment of a water "cap", which will determine the amount of water the ACT will be able to extract from the Murray-Darling system without buying a water right to use more. There is considerable national debate about the future of water rights for primary producers, which could have implications for all governments. We are facing considerable growth in the population of our region, which will turn to the ACT for water, as well as for other services.

We will need to meet all these challenges, and more, if we are to defer or avoid building that additional dam. The need is both environmental and financial, and we must ask the Canberra community to support this work. We have a very high level of environmental awareness—the highest in Australia. So why are Canberrans also the least likely in Australia to adopt water conservation measures in their homes? We have got excellent water resources and a relative lack of restrictions. Perhaps this has instilled in us a false belief that our water supply is endless.

The current drought has reminded us of our vulnerability in management. We need to work with the community and change the way Canberrans think about and use water. We will adopt the acronym WATER, water action—that's everyone's responsibility, to encourage the community to help establish directions for sustainable water management.

As we take this process further, Environment ACT, in close co-operation with other government departments and Actew, and with all the resources of the community, will develop a comprehensive, balanced and progressive strategy for making substantial and sustainable improvements in our water resource management efforts.

In the end, the water resources strategy for the ACT, when completed, will go beyond the Assembly motion calling for a water conservation and re-use strategy. The strategy that we will conclude over the next period will cover all aspects of the water cycle and water as a resource, including water's links to ecosystems and regional issues. The strategy will be formalised in the water resources management plan—due for review next year in any case—of the Water Resources Act 1998.

The Assembly should note the critical importance this government places on water resources. Our goal for Canberra is to be the best urban water managers and, in so doing, make the most use and re-use of the least amount of water. Achieving this goal will bring changes to the urban environment and lifestyle of our garden city. It will impact on the way the city is designed and built and the way we manage our lives. We need to acknowledge that this process of change may take decades.

It is fortuitous that the government is currently formulating the Canberra Plan. Each element of the Canberra Plan—the economic white paper, the social plan and the spatial plan—will need to consider water and how it will influence our lives.

We need to determine if it is practical for the ACT to adopt a clear and unequivocal aim not to build a new dam for the water supply. We will ensure that the vital issue of water resources is addressed now, in partnership with the community, in a far-reaching engagement process aimed at setting clear directions for sustainable water management and preparing a long-term water resource strategy for the ACT.

I present the following statement:

> Direction for sustainable water management—Development of a Water Resource Strategy for the ACT—Ministerial statement.

I move:

> That the Assembly takes note of the paper.

MS TUCKER (4.29): I would like to respond straightaway to this; it is not a very lengthy document. It is in response to a motion I put last Environment Day about six months ago.

To give credit, I am pleased that the government has committed to developing a strategy. I am rather concerned, though, that the Johannesburg summit's commitment to a plan of implementation that would result in some plans being set by 2005 is being referred to in the government's timetable here. Many of the countries that were participating in Johannesburg were facing incredibly difficult situations, and the length of time, even for the NGOs in some of those countries, was seen to be too long.

It is not necessary for Canberra to take that long to get such a strategy. It has to be ongoing anyway—educating the community and ensuring that all people living in Canberra are very conscious of not wasting water in their activities, whether residential, domestic, or commercial—and will have to continue. I am sorry that this document does not come up with harder initiatives right now.

For example, I was pleased to see the government offering rebates for water efficient showerheads last week, but an opportunity was lost there because the government could have also insisted at that time that all new developments and major refurbishments include water efficient showerheads.

I acknowledge that the minister has talked about the draft variation to the Territory Plan for north Gungahlin and that the government intend to bring water-sensitive urban design principles into that development. I give credit there.

However, we could be integrating requirements for saving water in a much more concrete way, right across planning in the ACT. We could be insisting on all new houses and developments—commercial, as well—having grey water systems, water tanks where appropriate and water efficient appliances. That could just happen now.

If people are going to argue that that is a burden on development or on purchases of houses or commercial facilities, then the argument in response to that is that you save money and you save energy. You save a lot of money by having water efficient appliances. It is not just about saving water; it is about the energy as well, particularly

with the use of hot water. COOOL communities, which I am sure Mr Wood is very familiar with, have a very clear analysis of how much money you can save if you have these efficiency measures in dwellings.

I feel disappointed that we did not see more hard action at this point because members of the community are particularly amenable now to having progressive changes made to our planning and building responses. People are very aware of the lack of water, and this would have been a very good opportunity to come in a little bit harder than the minister has done. That does not mean to say that it is not still possible, and I will be encouraging the government, while it is progressing a long-term strategy, to do more right now.

MRS DUNNE (4.34): Mr Speaker, I want to echo many of the comments made by Ms Tucker. This document is a disappointment because this motion was passed on 5 June, World Environment Day, and six months later the minister came into this place, not with a water strategy but with the directions for finding a water strategy. I think we have let the opportunity of the current crisis we are facing in the ACT slip by on this occasion.

Mr Wood says that, by and large, members of the Canberra community are very environmentally aware. But in the next breath he says they are not aware of the importance of water conservation, because for many years they have been lulled into what he calls—and I agree with him here—"a false sense of security" because of having large supplies of very high-quality fresh water. As a result of that, the people of Canberra, all of us in this place and elsewhere, have not been vigilant enough about maintaining and husbanding that resource.

Until the introduction of voluntary water restrictions, the highest quality potable water in this country was being pumped through the Captain Cook water jet because it was more convenient to do so than otherwise. Our fountains and pools are fed by the highest quality potable water in this country, but in the directions for a strategy there is a compete lack of innovation, inspiration and leadership.

It talks in the document about engaging the community, but there is nothing in this document that actually engages with the community. People in the ACT are not water aware, as people would be in, say, South Australia. As a result of that, we are being left behind.

We have talked here about innovation in water management for stormwater and waste water in North Gungahlin, but we are being left behind by the sort of development you see conducted by Salisbury City Council, which Ms Dundas and I visited during public works committee meetings in Adelaide recently. The sort of innovation you see in Adelaide, where people are acutely aware of water-quality issues, will leave us for dead. It is time we girded our loins and started to do something about it.

Six months after this motion was passed, we now have a quaint slogan—and it is a very quaint slogan—and an imperative to engage the community. But nothing, not even this quaint slogan, will engage the community. In the next few months, leading up to the introduction of the International Year of Freshwater, there is a huge challenge for this government to start to do more than it is currently doing. At the moment it is doing very little.

Ms Tucker did mention the $30 water rebate for water efficient shower heads, and this is a good thing. But this is catch-up politics. The opposition is introducing innovative legislation that requires people to do this in all of their domestic circumstances. We should be moving from domestic circumstances to commercial, government and industrial areas. We should sell the message that we need to be careful if we are to continue to have the highest quality potable water and not flush it down our loos or send it up through our fountains but do something sensible to re-use water that is appropriate for that use.

It is a great disappointment that, in the current circumstances of a critical drought facing us and the first time in all memory of our going into compulsory water restrictions in the ACT, this government after six months has brought forth a mouse.

MS DUNDAS (4.38): I also rise to speak on this strategy and to also echo the comments made by my colleagues. It is disappointing that this development of a strategy, which the government has been working on since the motion was passed in June, does not provide more clear direction or actual answers to the questions that it poses.

Australia is a dry country. Droughts happen in cycles across this land. Even though this motion was passed in the height of winter, fluctuating weather patterns across the ACT show that we need to have long-term planning for our water uses. It is unfortunate then that the government has come up with a slogan and a commitment to avoid as much as possible the building of another dam, but within that little clear direction, little clear future planning and little action behind the pretty words.

At the moment, we only have one person in the ACT government working on water resource policy, and they have developed a very good statement. But how are we going to implement any conclusions that we reach from this strategy? Where do we go from here? Where are the resources, and where is the commitment to more than just words?

We need to look at our own practices in the ACT in relation to little things like how we water our urban open spaces and our recreation parks and to the big things like the management of water through dams, lakes and rivers. Unfortunately, it seems that the government is not willing to make a commitment to answer these questions and to progress forward.

If the population of the ACT and surrounding region rises, as expected, to 450,000 by 2050, that will impact greatly on our water supply. We need to think long term and come up with concrete proposals, solutions and action, as opposed to just a pretty slogan. Hopefully, this strategy will lead us to decisions and outcomes for best managing the water supply in the ACT and lead us to acknowledge the impact that that has on our surrounding region. Hopefully, it will do that quickly.

Question resolved in the affirmative.

Rehabilitation of Offenders (Interim) Amendment Bill 2002 (No 2)

Debate resumed.

MS DUNDAS (4.42): I thank the Assembly for the short adjournment on this bill. I was awaiting return phone calls and I apologise for holding up the lightning speed agenda of this morning's sittings. As part of that, I will only speak briefly this afternoon.

The ACT Democrats will be supporting the measures in this bill. Creating a balance between the rights of victims and the rights of offenders is always difficult, and it is very easy to allow the rights of the victims to take precedence over those of offenders. But the offender and the victim are both citizens and both have rights.

The victim should be allowed protection and privacy. The justice system must allow victims to be heard and ensure that the victim has faith that speaking out does not mean that they will then be targeted. Offenders have rights, as well. They need to be aware of the allegations against them in order to prepare a defence. Parole is an area where these rights are often in conflict.

Many victims would rather the offenders were never released. Yet a corrections system based on rehabilitation needs to be able to assess for and allow early release on conditions and enable offenders to integrate themselves back into the community and serve as citizens of our society.

My concerns with this bill revolve around the systems that are in place to take reasonable steps to contact the victim—which is a term used in the bill—and around the increase in the threshold for withholding information from offenders, in effect allowing more offenders access to information.

Through discussions with officials from the department, I have heard in detail the steps and systems that are currently in place in both these areas, and I am satisfied that they are currently adequate. But it is not made clear by reading the bill, under section 96, that before any information is passed on to the offender, victims are contacted again and are able to withdraw their submission if they so wish. That is worth noting. Both these systems allow the victims to be protected whilst not stripping the rights from the offender.

The rest of the bill contains minor and technical amendments to the principal act to ensure that the Parole Board is able to act in a timely and efficient manner. These changes are definitely to be supported, and I thank the department officials for being able to quickly work with me to address the concerns that I had. Hopefully, the new system will recognise the rights of both the offender and the victim as they go through the process of dealing with parole.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections) (4.45), in reply: I thank members for their support.

I won't belabour the content of the bill. It is largely a machinery bill that improves existing processes. As Ms Dundas said—and my tabling speech said as well—it creates a balance between the rights of offenders and the rights of victims. That is essential, but it also has some practicalities in terms of the temporary incarceration of parole defaulters. I think therefore that it is an eminently practical bill and thank members for their support.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Criminal Code 2002

Detail stage

Clause 2.

Debate resumed.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (4.46): I move Amendment No 1 circulated in my name *[see schedule 3 at page 4186]*.

This is a minor technical amendment that will ensure that the amendments to the Territory Records Act 2002, which are in my amendment 14, will commence at the correct time. This amendment will not affect the commencement of other provisions of the bill.

MR STEFANIAK (4.47): The opposition will be supporting this amendment. I take this opportunity to comment on remarks Ms Dundas made at the in-principle stage. I did not want to seek leave to speak again at the time. She made some comments which showed that she was not quite aware what this bill is about. This bill is about legal principles and some new offences.

MR DEPUTY SPEAKER: Relevance, Mr Stefaniak! We are now in the detail stage.

MR STEFANIAK: We are talking about a specific amendment. I can do it at the end before we agree to the bill as a whole. I take your point.

Amendment agreed to.

Clause 2, as amended, agreed to.

Clauses 3 to 7, by leave, taken together and agreed to.

Clause 8.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (4.48): I seek leave to move amendments 2 and 3 circulated in my name together.

Leave granted.

MR STANHOPE: I move amendments 2 and 3 *[see schedule 3 at page 4186]*.

The purpose of clause 8 is to ensure that chapter 2 of the code will not apply to offences that are operating before the code comes into force and are not code compliant. Recently, however, a number of code compliant offences have been drafted for various legislation, with the intention that the code will apply to them when it comes into force on 1 January 2003. Amendment 2 will make it clear that the code will apply to those offences, even though they are enacted before 1 January 2003. Amendment 3 will make it clear that the code will apply to any pre-2003 offence that is amended after 1 January 2003, unless the relevant act or regulations provide otherwise.

Amendments agreed to.

Clause 8, as amended, agreed to.

Clauses 9 to 22, by leave, taken together and agreed to.

Clause 23.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (4.50): I move amendment No 4 circulated in my name *[see schedule 3 at page 4186]*.

Amendments Nos 4 and 5 will not change the effect of the provisions they amend but will assist in the drafting of code complaint offences.

Amendment agreed to.

Clause 23, as amended, agreed to.

Clause 24.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (4.50): I move amendment No 5 circulated in my name *[see schedule 3 at page 4186]*.

Amendment agreed to.

Clause 24, as amended, agreed to.

Clauses 25 to 27, by leave, taken together and agreed to.

Clause 28.

MR STEFANIAK (4.51): I move amendment No 1 circulated in my name *[see schedule 4 at page 4191]*.

I have grave fears about paragraph (c). Clause 28 reads:

> A person is not criminally responsible for an offence if, when carrying out the conduct required for the offence, the person was suffering from a mental impairment that had the effect that—
>
> (a) the person did not know the nature and quality of the conduct; or
>
> (b) the person did not know that the conduct was wrong; or
>
> (c) the person could not control the conduct.

Any one of those three paragraphs is enough to enable a person to plead they did not have the relevant mental intention.

This has been commented on in other jurisdictions. As I said at the in-principle stage, not every state or territory is enacting absolutely the same criminal legislation. I understand South Australia has adopted something very similar to this. Other states have adopted something along these lines, and Victoria and one other state have not.

The scrutiny report confirms what I have said. It says:

> A mentally impaired person is not criminally responsible if any one of these effects is present at the time of his or her conduct.

It goes on to talk about the third arm of the test—that is, that the person could not control the conduct—which I seek to delete. It states:

> The third arm of the test extends the common law and makes it easier for a defendant to run an "insanity" defence. Under clause 28, a defendant can argue that even if they did know the nature and quality of the conduct; or that they were aware that their conduct was wrong, they would not be guilty because they were "unable to control the conduct".

The explanatory memorandum, which quotes the Commonwealth explanatory memorandum, notes that some law reform bodies have been split as to whether this is desirable. The scrutiny report criticises the EM for not pursuing this issue. I will not go into that. It goes on to say:

> The issue was addressed by the Law Reform Commission of Victoria, in *Report No 34, Mental Malfunction and Criminal Responsibility* (1990). This Commission responded to the suggestion that the compulsive behaviour (sometimes, although inaccurately, called irresistible impulse) be a basis for the insanity defence in this way:

> The difficulty with compulsive behaviour is to distinguish impulses which are irresistible from those which were simply not resisted. In the light of the potential difficulties, the Commission does not believe that the insanity defence should be covered to include irresistible impulse.

In its *Discussion Paper No 14, Mental Malfunction and Criminal Responsibility* (1988), at 19, the Commission noted that "the test is not in fact restricted to impulsive actions. It applies to a general lack of capacity to control conduct".

In its *Discussion Paper*, the Commission noted that some cases of "irresistible impulse" would fall under the traditional test. That is, the defendant may argue that he or she had so lost control that they did not know what they were doing was wrong. The Commission noted however,

> This would not avail a defendant who could think calmly about the wrongness of his or her actions but was unable to resist. Under the legislation operating in some States, such a person *would* have an insanity defence.

I would submit that that is wrong and could open the floodgates to a lot of spurious defences. The report goes on to say:

> The problem of allowing the insanity defence in such cases—where there is no evidence of overwhelming emotion—is to distinguish them from cases of callous blameworthy conduct."

Blurring what might well be cases of callous, blameworthy conduct, enabling someone to succeed in this defence, is a real problem I do not think the community would want. I do not think it is desirable in our criminal justice system.

The report goes on to make a few other comments and refers to pages 18 to 20 of the Victorian commission's report.

The first two paragraphs of subclause 28 (1)—that the person did not know the nature and quality of the conduct or that the person did not know the conduct was wrong—are traditional elements that have been accepted over a number of decades as a defence of mental impairment or insanity.

I am very concerned that the third element—that the person could not control the conduct—will lead to spurious defences being run by people who are not really deserving.

Mrs Dunne: It is like the drunk's defence.

MR STEFANIAK: My colleague Mrs Dunne makes a very good point. She states, "It is like the drunk's defence." It does potentially get us into a situation like the Nadruka case which this Assembly overcame but which is effectively replicated in this legislation. The community was outraged at that case. I felt a bit sorry for the magistrate, who might have done a better job. I could see his reasoning. But we the legislature saw fit to amend the legislation to make it quite clear that undeserving persons should not have these types of defences available to them.

In this bill the defence that a person could not control their conduct is open to abuse. As the Victorian commission stated, it would be very easy for someone to run that defence and somewhat difficult to show that they were running a spurious defence. The bill, without this paragraph is fine. It is what applies in Victoria. It is accepted law. This criminal code, replicates a lot of good accepted law that has served us well for many decades.

We are opening a Pandora's box. It is far preferable to delete paragraph (c), and I would urge members to do so.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (4.58): The government does not support the arguments put by Mr Stefaniak or the amendment proposed by him. The government's position is that it is desirable that we retain paragraph 28 (1) (c), which Mr Stefaniak proposes be removed.

Mr Stefaniak, in support of his proposition, referred to the Victorian legislation and said, "This is how they do it in Victoria. If it is good enough for Victoria, it is good enough for us." The contrary point might just as well be made, Mr Stefaniak. Almost every other jurisdiction in Australia has adopted the formula which is in the code here. It is the position adopted by the Commonwealth, the Northern Territory, Queensland, South Australia, Tasmania and Western Australia.

In looking to Victoria for a precedent to support your proposal, you ignore six other jurisdictions that believe that the third arm—namely, that the person could not control the conduct—is the wisdom that applies to issues around mental impairment and criminal responsibility.

I understand the position you put, Mr Stefaniak. I am aware of the argument. To some extent, it reflects a more traditional notion of the insanity defence and the M'Naghten rules. Under the M'Naghten rules a person cannot be held to be criminally responsible for an offence if they did not know the nature and quality of the conduct or they did not know that the conduct was wrong. That is the standard formulation of criminal responsibility.

In relation to people with a mental impairment, it is proposed in the code that we take an extra step and say "or a person could not control the conduct". Your concern seems to be that this is a further exception open to abuse.

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

MR STANHOPE: We need to go back to the basics in relation to this provision. It is important that we not look at this in the context of a person rocking up and saying, "Yes, I did that, but I could not control myself. I could not control my actions. I could not control my conduct." The person who claims that defence has to be suffering a mental impairment. You have to prove to the court that you have mental impairment. The first element of proof required to sustain the defence is that you have a mental impairment.

You then have to be able to prove that as a result of that mental impairment you could not control the conduct that led to the commission of the offence. The law proposes that a person who proves that they have a mental impairment and proves that they could not control their actions as a result of that mental impairment should not be held criminally responsible for their actions.

This is not analogous to the so-called drunk's defence. This is not analogous to a person who gets drunk or stoned and as a result of their intoxication loses inhibition or loses control and commits an offence, and says, "I should not be held responsible for my behaviour or my conduct, because at the time I was not responsible. I was so impaired by my consumption of an intoxicating substance—drug or alcohol—that I cannot and should not be morally responsible for my behaviour."

There is a significant difference here. This is of a completely different order. This is about a person who comes to the court with a diagnosed, provable mental impairment, somebody who lives with a condition over which they have no control and who says, "As a result of this impairment, this condition, I cannot control my conduct in certain circumstances, and my conduct may lead me to commit an offence."

It is appropriate that we allow that exception, so that the exception would be that a person with a mental impairment did not know the nature and quality of the conduct, was not aware of what they were doing; or that they did not know the conduct was unlawful or wrong, did not have the capacity to make that judgment; or that if they did know the nature and quality of the conduct or if they did know the conduct was wrong, they nevertheless could do nothing to stop it because of their mental impairment.

These are matters that need to be proved. You cannot just rock up in court and say, "I have a mental condition, and I cannot control my conduct." You have prove these things. You have to convince the jury that you have a mental impairment. Then you have to prove that as a result of that you could not control the conduct you engaged in. The court has to be convinced. That is at the heart of every decision in court. You have to prove the elements.

A number of conditions have been drawn to my attention. One is Tourette syndrome, which leads to uncontrollable verbal outbursts, normally associated with foul and offensive language. Some people cannot help it. It is syndrome medical science recognises. There are some people who cannot control their speech, their outbursts or their language.

When my mother developed Alzheimer's, she went through a very aggressive phase. She swore like a trooper at the drop of a hat—outrageously so—committing a public-order offence, but I would like to think that she would have had the benefit of a provision such as this had it ever come to it.

This is quite a reasonable provision. It is in step with what almost every other jurisdiction in Australia does. It is a humane acknowledgment of what some mental impairment leads to.

MS TUCKER (5.06): I have listened very closely to the arguments that have been put. I have to be honest and say I was undecided at the beginning, although I was favouring Mr Stefaniak's amendment. Mr Stanhope's explanation has persuaded me that this provision is probably okay. I did say in my in-principle speech that I have concerns. I still have concerns. I understand what the Attorney-General is saying. I guess I will just have to keep an eye on it.

This is in the legislation in all the other states, apart from Victoria. The situations the Chief Minister described seem to require this sort of provision. I thought that clause 28 (1) (b)—"the person did not know that the conduct was wrong"—might cover an outburst by a person with the syndrome the Chief Minister described. I guess they would not know it was wrong. I am not quite sure why clause 28 (1) (b) would not cover that.

Mr Stanhope: They might know it is wrong. They might know it is outrageous. They cannot stop it.

MS TUCKER: The Chief Minister thinks they might know it was wrong. That was not my understanding of how you described the condition. I did not understand that it was an involuntary thing; that they might know it was wrong.

I will not support Mr Stefaniak's amendment, although I do put on the record that I am slightly concerned.

MS DUNDAS (5.08): It has been interesting listening to the debate on whether the person could control their conduct and what impact it would have on our legal system if we left this provision on the statute book. The Butler committee in England examined this issue in the mid-1970s and put forward many arguments. It concluded that this broad definition of mental impairment allows a jury to hear psychiatric testimony based on the latest expertise and, most importantly, leaves the ultimate question of responsibility to a jury, the basis of our legal system.

I understand problems have been raised in a number of jurisdictions about experience with definitions. But weighing up the evidence presented, I believe the balance of authority favours the view that ultimately the question of whether a condition is a disease of the mind and whether a defendant was able to control their conduct is a matter for a jury. I think it is important that we leave this definition so that a jury to can consider this under the criminal code. Hence I will not be supporting Mr Stefaniak's amendment.

MR STEFANIAK (5.10): I can count. With Ms Dundas supporting the Chief Minister, my amendment will not succeed.

Ms Tucker made a couple of valid points. While she is prepared to let the Chief Minister proceed with this, she will keep a close eye on it. I think that is very sensible. I do not want to see this territory get in a situation like we had with the Nadruka case. The opposition will be keeping a very close eye on this provision and, if necessary, will move amendments, hopefully with more support.

Ms Tucker made a good point in relation to paragraph 28 (1) (b) and the conduct Mr Stanhope was talking about. I think that paragraph could quite easily cover the situation he was referring to. Some of the issues the bill seeks to cover with paragraph 28 (1) (c) would be taken up by paragraph 28 (1) (b) as it has been applied in courts. Ms Tucker could well be right. I do not know that the example the Chief Minister gave was particularly relevant. Nevertheless, he has the numbers. We will see how this goes. I hope we do not have a flurry of spurious insanity defences.

Amendment negatived.

Clause 28 agreed to.

Clauses 29 to 32, by leave, taken together and agreed to.

Clause 33.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.12): I move amendment No 6 circulated in my name *[see schedule 3 at page 4186]*.

This amendment will correct an oversight and bring this provision into line with the corresponding model criminal code provisions. It is currently drafted in a way that would prevent a court from considering evidence of intoxication, even if it is involuntary, in determining whether a relevant defence applies. The amendment will make it clear that only evidence of self-induced intoxication is excluded for these purposes.

Amendment agreed to.

Clause 33, as amended, agreed to.

Clauses 34 to 41, by leave, taken together and agreed to.

Clause 42

MR STEFANIAK (5.13): I move amendment No 2 circulated in my name *[see schedule 4 at page 4191]*.

Mr Deputy Speaker in relation to the issue of self-defence, clause 42 (1) provides:

> A person is not criminally responsible for an offence if the person carries out the conduct required for the offence in self-defence.

Subclause (2) contains some classics. It states:

> A person carries out conduct in self-defence only if—
> (a) the person believes the conduct is necessary—
> (i) to defend himself or herself or someone else; or
> (ii) to prevent or end the unlawful imprisonment of himself or herself or someone else; or
> (iii) to protect property from unlawful appropriation, destruction, damage or interference; or

(iv) to prevent criminal trespass to land or premises; or
(v) to remove from land or premises a person committing criminal trespass; and

Paragraph (b) of subclause (2) is crucial. It states:

> the conduct is a reasonable response in the circumstances as the person perceives them.

So basically that subclause reads, "A person carries out conduct in self-defence only if the conduct is a reasonable response in the circumstances as the person perceives them." That has been a tried and true test, standard, which has been applied in our courts for many decades. There is a lot of case law in relation to that. It is something that courts from time to time look at.

This bill seeks to add an additional subsection which, I again would submit, is not necessary. Subclause (3) states:

> However, the person does not carry out conduct in self-defence if—
> (a) the person uses force that involves the intentional infliction of death or really serious injury—
> (i) to protect property; or
> (ii) to prevent criminal trespass; or
> (iii) to remove a person committing criminal trespass; or

I will come back to that. I don't have a problem with paragraph (b) of subclause (3), which reads:

> the person is responding to lawful conduct that the person knows is lawful.

If my amendment is successful, subclause (3) would read, "However, the person does not carry out conduct in self-defence if the person is responding to lawful conduct that the person knows is lawful." In other words, a lawful arrest by a police officer. Obviously, someone could not say they were acting in self-defence if they resisted or tried to interfere in such a circumstance.

As I said, I don't think we need paragraph (a) of subclause (3). The law is quite clear and has been used often in respect of 42 (2) (b). The scrutiny report makes a number of comments in relation to this, and I will read the relevant part. It states:

> The test in subclause 42(2) is twofold: first, the person must subjectively believe that their conduct is necessary for an objective stated in para (a) (such as, (i) to "defend himself or herself or someone else", and (iv) "to prevent criminal trespass to land or premises"), and secondly, that the person's response is objectively a "reasonable response in the circumstances as the person perceives them". (This second arm of the test appears to require the fact-finder (the jury judge or the judge, as appropriate) to take a view on what it was that the defendant perceived the circumstances facing him or her to be, and then to assess what a reasonable person so placed would do.)

There have been a number of cases, as I said, in relation to that. I can recall a case in South Australia not all that long ago where an 84-year-old man felt incredibly threatened when a couple of very fit 20-year-olds broke into his garage. He killed one of them with

a shotgun and was charged with murder. I think the charge was reduced to manslaughter and the jury did not uphold that charge. It was deemed—and I can't quite recall the facts—that what he had done in the circumstances was reasonable. Indeed, this defence has been used, sometimes successfully and at other times not successfully, in a number of cases where people have been charged.

Under the subheading "Action to prevent criminal trespass and the scope of the defence" the scrutiny committee report states:

> The Explanatory Memorandum notes:
>
> [Subclause 42(3)] restricts the defence to ensure it does not apply to force that involves the intentional infliction of death or really serious injury for the purpose of protecting property rights.

I am not at this stage going to deal with really serious injury, because I know the Chief Minister is going to amend the definition, and I will speak then. The report goes on to state:

> A house-holder may be faced with a situation in which he or she determines, or feels compelled, to defend her or himself by conduct they perceive to be necessary "to prevent criminal trespass to land or premises", (which is a stated basis for acting in self-defence: para 42(2)(a)(iv)). Such a person is not, however, well-placed to make a judgement as to whether the force they are proposing to use is such that a jury would later characterise it as having involved "the intentional infliction of death or really serious injury": para 42(3)(a). The house-holder's reaction will often be by way of instinct and not after considered judgement. In this respect, it should be borne in mind that the householder's conduct must (that is, even if s 40(3) were deleted) still satisfy the test in para 42(2)(b)—that is, her or his conduct must be "a reasonable response in the circumstances as the person perceives them".

The scrutiny report goes on to talk about the problems involved in defining "really serious injury". The Chief Minister, as I said, is going to address that.

I have some very real concerns in relation to how this new subsection might actually be used. Firstly, I think people in our society have some significant concerns already about just what they can do to protect themselves, their property, their homes, and people within their homes. There is already a very strong view in a large section of our community that it is the criminal who actually has all the rights, and that you cannot do anything if someone invades your home. I am concerned that an unnecessary subclause like (3) (a) will only perpetuate that view.

The law has been quite clear for many years in terms of what is provided in clause 42 (2) (b) of this code, and I think that is more than adequate for the situation. I don't really want to see situations where perhaps the subclause could be invoked. For example, somebody who suddenly in the middle of the night finds two persons in their home could use a baseball bat to brain and totally incapacitate or kill one of the intruders. The other burglar, who races off, might say, "Look, Fred and I were only going to take the video. We would never have hurt anyone. In fact, if we were discovered we were going to bolt." But how does the householder know that?

The householder might have young children or someone else in the house and would have no idea what might happen. I would submit that it is not reasonable for a person to be put in a situation of having to make quick decisions about complex legal matters. People will react by instinct. Any reasonable person would know that someone could be killed if they were hit over the head with a baseball bat. So is that intention? Hitting someone over the head with a baseball bat could certainly be classed as very reckless behaviour. Indeed, such an act could result in death.

So there are a number of problems with this. However, I certainly don't want to see people in the community perhaps confused or worried even further about what they legitimately can do to protect themselves, their homes and their loved ones in these sort of circumstances.

I cannot think of any real instances in the ACT, or indeed in Australia, where anyone has deliberately laid in wait for burglars and said, "Come on. Come here and I'll waste you with my shotgun." I might be wrong—the Chief Minister might be able to point to a case somewhere else—but I certainly cannot think of anything in the ACT which would properly invoke a section such as this.

Even if someone did intentionally inflict death or serious injury—where that involvement was planned and not spontaneous; and government law officers have explained to me that intending to do it is something more than that—such an action would not be covered anyway by 42 (2) (b), as the conduct quite clearly would not be a reasonable response in the circumstance.

So I don't think we need paragraph (a) of subclause (3). I don't think it assists the law at all. In fact, I think it complicates it and will make it harder for ordinary honest citizens to know what their legitimate rights are. I don't want to see a situation in which people are so scared of defending themselves or exercising reasonable steps to protect their property that they do absolutely nothing and are killed or maimed by a home invader as a result. I think the law as it stands is fine. I would ask members to support my amendment.

MR DEPUTY SPEAKER: The member's time has expired.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.23): Mr Deputy Speaker, the government will not be supporting the amendment. This provision is quite explicit in its terms, that if the defendant uses force to protect a property right and intends to kill or cause serious harm in the defence of that property then the defence doesn't apply.

I think you are not putting nearly enough emphasis on the word "intention". What the provision says—and I think the provision is reflective of us as a civilised people, as a civilised community and society—is that it is appropriate that we not allow people in defence of their property to set out to kill somebody. We are suggesting that there should be a different test in relation to the defence of life than there should be in relation to the defence of property. I think that is quite appropriate; I think this is a legitimate distinction for us to draw. I don't believe that suggesting it is appropriate to kill a fellow human being in order to defend property or a property right is a measure of a civilised society.

If in the defence of their property a person is accidentally killed, if in the defence of their property a person is killed but there is absolutely no intention in the protection of the property to kill that person or to seriously injure or maim them, then that is a different circumstance. But if we have a burglar in our house and we have no reason to believe that that burglar has any design to harm us, if we believe fully, consciously and reasonably that that person intends to pinch our CD, our video player or our television, it is not appropriate that the Assembly legislates to allow us to set out to kill that criminal to save our property. That is just not reasonable; that is not civilised. It is not the standard that a civilised society or community should apply. That is my view, that is my belief, and that is why we have explicitly stated that this defence should not apply to a person protecting their property.

We have to be clear about this point. In this provision we are talking just about intention. You can defend your property, and you can rely on the defence if you did not intend to kill or cause serious injury. Once again, this is an issue that the criminal courts deal with all the time. These are the distinctions that are drawn in every defence of a murder case. It is a vital element, it is the No 2 element—"Yes, I did the act, but, no, I didn't intend to kill." These are the two arms of the defence of anybody charged with murder. Either, one, "I didn't do it," or, two, "Yes I did do it but I didn't intend to cause death."

We are saying here in relation to a property defence, or in defending one's property, that if you did not intend to cause death or serious injury then the defence applies. That is reasonable. That is a standard that I and this government will stand by. But we are not going to sanction or defend the deliberate taking, the intentional taking, of human life to protect property. I think that is a reasonable position, it is a just position, it is a civilised position, and it is a position that we will continue to stand by.

The shadow Attorney alluded in his speech to the notion of reacting by instinct. There has been some suggestion that the householder will have to stop and think and make the judgment: "Oh, if I do this, am I covered by the defence?" We all respond by instinct. I think most of us would probably go wobbly at the knees and try to get out of the way. That is probably the instinctive response of most people, but some won't. Some will respond in other ways. Some will respond instinctively and aggressively, and their instinct will be to protect their property, to protect their home and to protect their family. In following through on that instinct they may cause grievous bodily harm. But if their intention was simply to protect their household, to protect themselves, to protect their family, to protect everything that was important and valuable to them and they had no intention to take life then the defence is notionally available to them.

The criminal law has traditionally always stopped short of authorising lethal and serious bodily force in the defence of property. It is the position we have had traditionally. I learnt when I was at law school 30 years ago, and I know Mr Stefaniak did as well, that that has always been the position of the criminal law. This is a position based on the values a civilised society puts on human life and the belief that human life must always be distinguished from property.

I might just say, in conclusion, that a very significant and persuasive example of this view and attitude of the criminal law is to be found in section 221 of the Crimes Act, which provides that "an arresting police officer shall not do anything likely to cause death or grievous bodily harm to a person unless it is necessary to protect life or to

prevent serious injury". We arm our police with a whole range of really significant powers but we don't arm them with the power to cause death or to cause grievous bodily harm to protect property. We limit that power to the police for the purpose of protecting life or preventing serious injury, and this reflects a very significant and important principle of the criminal law.

MS TUCKER (5.31): This is another interesting discussion. I will not be supporting Mr Stefaniak's amendment. Mr Stefaniak referred to clause 42 (2) (b), which states:

> the conduct is a reasonable response in the circumstances as the person perceives them.

So, basically, a person is deemed to be carrying out conduct in self-defence only if the person believes the conduct is necessary—and there are a list of criteria in paragraph (a) of subclause (2), such as "to defend himself or herself or someone else"—and that the conduct is a reasonable response in the circumstances as the person perceives them.

I do not think the removal of paragraph (a) of subclause (3), as proposed by Mr Stefaniak's amendment, can be justified. My understanding is that paragraph (a) is saying that the argument of self-defence would not be accepted if somebody basically used an unnecessarily severe response. I have an image of someone who has the capacity to inflict severe damage, who basically does have the aggressive response that Mr Stanhope spoke about, and who chooses to act in such a way whether or not it is necessary to do so. I think that is the critical issue.

We know that there is a tendency, particularly in the United States, for people to form vigilante-type groups to go out to claim back the city. They attempt to get rid of violence by being as violent as possible in destroying people who they believe are perpetrators of violence. Obviously, by acting in such a way they are guilty of that themselves.

I think it is very important that, as a society, we make the point clearly that it is not appropriate for someone to use extreme force in a situation which does not require such a response. The words "intentional infliction" are a critical aspect of subclause (3) (a). So that is really covering something quite different.

A person who perceives, as some people do, that it is a reasonable response to kill someone who comes onto their property, could argue under subclause (2) (b) that their action was "a reasonable response in the circumstances". I know that the gun lobby in the United States argue that they have the right to bear arms and defend the country. So I think this is very important clause and I agree with what the Chief Minister has said.

MS DUNDAS (5.34): The ACT Democrats will not be supporting this amendment. However, we recognise that, as was the case with the first amendment Mr Stefaniak brought to the attention of the Assembly, we are discussing a vexed question of criminal law. We understand that the Model Criminal Code Officers Committee themselves were also divided on this issue of excessive self-defence and there are certainly conflicting views on pleadings of defence when causing serious injury or death, many of which have been brought to light today in the Assembly.

I understand that the common law had become so complex that the High Court actually abolished the defence in 1987 and, following much debate, the criminal code committee recommended that the offence be included as it stands in this piece of legislation. I am certain that legal debate will continue around this area of self-defence—of the right to protect oneself against serious harm by people committing criminal trespass.

We, as legislators, obviously have a duty to follow this debate and to monitor the implementation of this legislation. We have a duty to ensure that it is not being misused. At this stage I am happy to see subclause (3) (a) remain as part of the criminal code.

MR STEFANIAK (5.35): Mr Deputy Speaker, I will speak again and hopefully close debate on the amendment. From what Ms Tucker and Ms Dundas have said, the Chief Minister has the numbers to defeat my amendment.

I would like to make one point about what Ms Tucker raised in relation to clause 42 (2) (b). I think she might have missed the point a little bit. Paragraph (b) states:

> the conduct is a reasonable response in the circumstances as the person perceives them.

There are a couple of elements there. You have to look at what the person perceives and then, given that, it has to be a reasonable response. If a person perceived that someone was taking their video and that they were not being personally threatened, racing over and braining them with a baseball bat or shooting them with a shotgun or whatever would not be a reasonable response. This test is used by the court to determine whether the response was reasonable. So there are two elements here: you have to look at what the person actually perceives and then determine whether the conduct is reasonable.

The person might perhaps be wrong, on the spur of the moment, in what they perceive, but if they genuinely perceive something and the conduct is reasonable—conduct that a reasonable man would believe to be reasonable—then, fine, that defence would be available. But it would not be available, and has not in fact been available in the past, to people who knew, or could be perceived to have properly known, that they were not remotely threatened and deliberately set out to kill someone. In that case, that person would in fact be charged.

All we can now do is see what effect—good, bad or indifferent—Mr Stanhope's clause, which will go through in its entirety, will actually have. I certainly hope that it does not lead to innocent people being harmed—people who might not otherwise have been harmed if subclause 42 (3) (a) were not in the legislation. We will be watching this very carefully, as we will the other provision discussed earlier that has gone through unamended.

Amendment negatived.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.38): Mr Deputy Speaker, I move amendment No 7 circulated in my name *[see schedule 3 at page 4186]*.

The scrutiny of bills committee has made the point that it is undesirable to employ the term "really serious injury" without definition. The government agrees, and accordingly this amendment will replace the term "really serious injury" in clause 42 (3) (a) with the term "serious harm".

Amendments 16 and 17 also seek to insert a definition of harm and serious harm in the dictionary, which accords with the definition of those terms recommended by the Model Criminal Code Officers Committee in chapter 5 of its report on fatal and non-fatal offences.

Amendment agreed to.

Clause 42, as amended, agreed to.

Clauses 43 to 57, by leave, taken together and agreed to.

Clause 58.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.41): Mr Deputy Speaker, I move amendment number 8 circulated in my name *[see schedule 3 at page 4186]*.

Both amendments 8 and 9 seek to insert examples to assist the reader in understanding subclause 58 (3) and paragraph (b) of clause 59.

Amendment agreed to.

Clause 58, as amended, agreed to.

Clause 59.

MR DEPUTY SPEAKER: Mr Stanhope, I think you have spoken to your amendment No 9.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.39): I have. Thank you, Mr Deputy Speaker. I move amendment No 9 *[see schedule 3 at page 4186]*.

Amendment agreed to.

Clause 59, as amended, agreed to.

Clauses 60 to 67, by leave, taken together and agreed to.

MR SPEAKER: I advise members that there are no clauses 68 to 99 due to the drafting style of this bill. It is intended that the code will be enacted in chapters.

Clauses 100 to 105, by leave, taken together and agreed to.

Clause 106.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.41): Mr Speaker, I move amendment No 10 circulated in my name *[see schedule 3 at page 4186]*.

In accordance with amendment 7, the definition of "serious harm" will now apply to clause 42 (3) (a) as well as clause 106. This amendment will therefore remove the definition of "serious harm" from subclause 106 (3), and amendments 16 and 17 will insert that definition in the dictionary, together with a definition of "harm".

Amendment agreed to.

Clause 106, as amended, agreed to.

Clauses 107 to 122, by leave, taken together and agreed to.

Clause 123.

MS TUCKER (5.43): I move revised amendment No 1 circulated in my name *[see schedule 5 at page 4191]*.

The model criminal code report, under the heading "Supercession of existing offences of damage to infrastructure" at page 211 of chapter 4 states:

> Criminal liability for sabotage supplements the general offence of criminal damage. Taken together, the offences of sabotage and criminal damage eliminate the need for a host of particular provisions in existing law, dealing with damage to railways, waterways and other infrastructure.

Under the heading "Penalty" the report states:

> Sabotage is by far the most seriousness of the Chapter 4 offences, punishable with the same severity as manslaughter or dangerous driving causing death. The draconic penalty for sabotage is a reflection of the origin of the offence as an anti terrorist measure.

I seek leave at this point to table a supplementary revised explanatory memorandum.

Leave granted.

MS TUCKER: I thank members. Basically, the offence, as written in the model code and in this bill does not define terrorism in addition to the actual offence of property damage. Obviously, I have concerns about this aspect of the criminal code, and this is why I have moved an amendment.

I have prepared the amendment to make it clear that actions which have been part of our democratic society differ from sabotage. Sabotage is something intended to wreak destruction on a large scale. Although the 25-year penalty of the sabotage offence indicates its application to this more serious level of action and intention, it may also work on lower level offences.

One of the things the criminal code does is remove graduated penalties, leaving the assessment of an appropriate penalty more to the courts. For this reason, this amendment clearly excises peaceful protests and industrial action from the offence of sabotage.

While the federal parliament has debated bills creating specific terrorist offences that carefully define terrorism to exclude protest and advocacy, we are picking up this terrorist-strength penalty for the same offences we used to have, but without the limitations. New Zealand and Canada have similar exemptions in their legislation, and the amendment that I have moved today is based on a New Zealand model. I would like to thank Ms Dundas' office, which was in particular very helpful, and Mr Stanhope's office for working with me to find an amendment that was acceptable.

My colleague in the federal Senate has argued that there was no need for the terrorism-specific legislation as the existing offences of murder, conspiracy and so on were really sufficient to enable prosecution.

In this case, the model criminal code process has picked up on what could be seen as a gap in our laws in that sabotage-type offences were specific to particular public facilities, and these proposed offences have generalised the essence of those offences. But along with addressing this gap, the penalties are more than doubled and the committee has explained this with the spectre of terrorism. I think it is very important that we exclude, as has the terrorism definition, protest activities. My amendment gives effect to this concern.

The government may still argue that protests will not be caught up because that is not the intention of this bill, because there is a required "intent" in a property or computer offence, and because it refers to "major" disruption. Further, New South Wales has passed a similar bill.

Despite the intention of the government, which I do not have particular reason to doubt—although the news that the AFP's new special forces will be used for demonstrations, bomb threats and terrorism, all in one group, is a worry—I believe that the legal context for this bill is different from that which surrounded the introduction of the New South Wales bill two years ago. This part is clearly directed at terrorism. The MCCOC, as I have said, stated this; and the New South Wales Attorney-General stated it even more clearly when introducing it before the Olympics.

What might "major" disruption mean when it comes to a case? Is it major to have your office sat in for a day while the words "Fair pay for a fair day's work" are spray-painted on the furniture? Two days? A week? If people threaten to lock themselves to parts of the workplace, thus causing "loss of a use or function of the property by interfering with the property" (see proposed 100 (c)), and to stay there, thus causing disruption to the use or operation of a facility—say it is the wharves, and the wharf owner fears it will be carried out—do we want to charge those people with sabotage? What if their complaint was about terrible working conditions or about a nuclear waste dump?

While there are no precedents yet for the use of this law, definitions of "major disruption" to workplaces have been part of industrial relations cases. For instance, the Administrative Appeals Tribunal on 4 January 1985 made a ruling on the effects of

a black-banning at a construction site relating to the dismissal of a worker who respected that black ban. The argument was put, and accepted by the tribunal, that the black-banning represented a major disruption. Even if you don't like that form of protest, isn't it a bit much to be prosecuting people for sabotage, with a maximum sentence of 25 years; or for threatening to—especially for threatening to?

In 1993 this Assembly referred the matter of peaceful assemblies to the then Community Law Reform Committee. In 1997 the committee reported, the report was tabled without comment and, as far as I can tell, sank without a trace. I acknowledge that the Chief Minister has promised to review this work and take into account useful suggestions. As Mr Stanhope said in discussing the bill of rights:

> We need to be ever vigilant that freedoms will not be eroded. People may say that our human rights are protected, however our human rights are not protected anywhere. We simply trust that our society will protect them.

That was when Mr Stanhope was arguing for a bill of rights. But some of what he said is also very relevant in this context.

Also of interest in this discussion is the Community Law Reform Committee's 1997 report, which states:

> 33. Consideration of whether there should be a right of peaceful assembly involves a difficult balancing of interests. It is well recognised that the ability to assemble to make known grievances to governments, legislatures and bureaucrats is an important element of a democratic system of government. It has been said that the response of a government to a peaceful protest is a good test of the value it really places on its commitment to human rights. However, it has also been noted that assemblies can be "high pitched, brainless and brutal, spreading fear in minority communities, intimidating workers and clogging up traffic. More than any other freedom it comes at a price, and a price moreover which Governments are increasingly reluctant to pay".

That quote is from Geoffrey Robertson's book: *Freedom, the individual and the law*, 1993. The report continues:

> 34. With a small number of notable exceptions, most of the assemblies of protest that have occurred in the ACT, and Australia, in recent years have been non-violent. One writer has noted, however, that an aura of actual or potential violence accompanies much media presentation and popular perception of protest. The existence of this perception has tended to result in the taking of a "law and order" approach to assemblies in many jurisdictions.

The Community Law Reform Committee is quoting Brian Martin, from *Protest in a liberal democracy*. The report continues:

> The way in which police approach assemblies appears to be one important determinant of whether an assembly remains peaceful or is marred by violence. It has been noted that when crowds are met with physical force by the police, the frequency of riots or the extent of violence associated with them tends to increase. On the other hand, it has been demonstrated that a handful of police can succeed in peacefully dispersing a crowd.

Another general comment relevant to the property offences is the substantial increase in penalties. The damage to waterways and railways provisions in sections 141 to 148 of the current Crimes Act carry a penalty of seven or 10 years. These are our sabotage offences—the specific type referred to by the Model Criminal Code Officers Committee. This include the offence of damaging or destroying signals for trains, which really is likely to cause serious injury or death, although the section does not mention that specifically. These offences, too, are not for threatened actions but for actual actions.

So why are we significantly bumping up the penalty—from 10 years to actually interfere with a railway signal, up to 15 years to threaten to cause damage to a public facility, and up to 25 years to actually cause damage to a public facility? *(Extension of time granted.)*

As I have said, the model criminal code report explains the heavy penalty by the clause's heritage as an offence specifically for terrorist acts. In light of our recent personal understanding in the West of what that can mean, I can understand to some extent the desire to make the penalties greater. On the other hand, destroying a dam would wreak massive destruction, too. I record the Greens' strong opposition to this kind of increase in penalties.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (5.53): Mr Speaker, the government will support revised amendment No 1. The government had intended to oppose Ms Tucker's initially circulated amendment in relation to this provision but I am glad that, through the consultation that has occurred between Ms Tucker's office, Ms Dundas' office and my office, there is a formulation that we have all agreed on.

Having said that, I have to say I didn't find Ms Tucker's speech in support of her amendment particularly persuasive, and I feel it is important to respond to that. It is important that we understand what it is that the government is doing here. Ms Tucker has given some very significant thought, effort and energy to setting out her concerns around this sabotage clause within the criminal code, and I would like to respond in some detail to that.

I have to say at the outset that it is very difficult to see how the sabotage offences in the bill could ever be used to prosecute peaceful protestors or those involved in lawful industrial action, and it most certainly is not the intention of the legislation that that be the case.

Ms Tucker's amendment reads:

> To remove any doubt, a person does not commit an offence against this section only because the person takes part in a protest, strike or lockout.

It was never the intention, of course, that a provision that is aimed wholly and solely at sabotage, a concept which most of us have a reasonable understanding about, would be used against a person participating in a protest, strike or lockout. Ms Tucker's amendment seeks to remove any doubt that that is the case, that "a person does not commit an offence against the section only because". In that sense, the government is happy to accede to that question of making it crystal clear that only because of

participation a person can't be charged with sabotage. Certainly, that has been the case in New South Wales now for 18 months or so, and the provision, of course, in New South Wales has not been used in relation to protestors or strike action or anything like that.

Sabotage offences are directed at those who cause, or threaten to cause, damage to important public facilities and infrastructure—with the intention. Once again, we always have to go to the force of the criminal law. The provision talks about committing an offence with the intention of causing "major disruption to government functions; or major disruption to the use of services by the public; or major economic loss". It is the intention of doing these things.

The intention of the legitimate protestor, the intention of the industrial campaigner, is to raise public or political awareness of an issue or to express an opinion on a particular issue. The intention of the protestor, the intention of the legitimate industrial campaigner, is not to cause major disruption or major economic loss. The terms "major disruption" and "major economic loss" derive their meaning from the context of the offences in which they appear.

In the context of sabotage offences, these terms would be understood by the courts as something comparable to catastrophic disruption or economic loss because of what sabotage entails. We can use this debate, and we can use it now—we need to make this crystal clear—to point out that major disruption and major economic loss are intended to be understood in this way, and the courts have to take cognisance of that. It is the intention of this legislature and it is the intention of the government that we are talking here about major economic loss and major disruption in the context of these offences as they appear in the legislation. The disruption or economic loss caused by a typical rowdy protest or sitting, involving police, minor damage to property and the usual scuffles, does not fall within the requirements of any of these offences.

It is also fanciful to suggest that a prosecution would be brought under these provisions to punish or stop peaceful protest and industrial campaigns. First, the police and the DPP would have to be satisfied that the elements of the offence were made out and, as I have said, that in itself would present a major hurdle because protestors would not have the relevant intent—it would not be what they intend. Secondly, the DPP would have to be satisfied, in accordance with the prosecution guidelines, that such a prosecution was in the public interest and that there are reasonable prospects of a conviction. Thirdly and finally, in the highly unlikely event that a prosecution is brought to court, the court would have to be satisfied of all the elements of the offence and that all the elements were made out.

To establish the sabotage offence, it must be shown that the defendant caused damage or disruption to a public facility by committing a property offence or committing or causing an unauthorised computer function, and that the defendant intended to cause major disruption to government functions, or major disruption to the use of services by the public, or major economic loss. There is an imposed potential penalty of 25 years imprisonment. This is a very serious offence. This is not about protests or strike action.

It is important, too, that we need to understand the context of the sabotage provisions in relation to terrorism and our response to terrorism. I think, in that regard, we need to be clear about the fact that these provisions were agreed on by model criminal code officers

well before September 11. This provision is not a response to recent events. This is not a knee-jerk response by this government to the terrorist attacks on New York. This provision was drafted well before those events occurred and I am concerned about suggestions that this government has run off and made some hurried response to those events, as serious and as concerning as they are. So to suggest that in some way this government is engaged in some overreaction or some knee-jerk response to those events is simply wrong.

This government—and I have said it in this place a number of times—is conscious of the danger of overreacting in these very uncertain times. We do need to be steady and measured in what we do. We do need to understand, and we do understand all too clearly, that this war against terrorists and terrorism that we are facing could just as easily be lost if victory is purchased at the expense—and this is a point that Ms Tucker makes—of our fundamental democratic rights. What do we gain if we lose everything that we hold dear?

Sitting suspended from 6.01 to 7.30 pm.

MR STANHOPE: Mr Speaker, I wish to conclude the remarks I was making before the break in relation to Ms Tucker's amendment, an amendment which the Labor Party government is supporting.

Ms Tucker: You wouldn't know it from your speech.

MR STANHOPE: Well—

Ms Tucker: Don't start again. You don't need to respond.

MR STANHOPE: As I said, Ms Tucker, your speech in support of your amendment was not particularly persuasive. In fact, I sat there thinking that you were making it hard for me, Ms Tucker.

Mr Stefaniak: You would have had the numbers, anyway.

MR STANHOPE: That is right. I have no difficulty in putting the matter beyond doubt. The point I am making is that, as far as the government is concerned, it never was in doubt, and I stand by that position.

The only other point I wish to make in addition to the points that I made before is that I do not agree with the connection that Ms Tucker makes between the position that she takes in relation to this offence and the position that was put by the Commonwealth and applies in Commonwealth legislation in the Security Legislation Amendment (Terrorism) Act 2002. That position, I believe, is quite different, and my advice is to that effect. In relation to that aspect, Ms Tucker draws comparisons and says, indeed, that the amendment that she proposes is, in fact, of the same order as additions that were made or exemptions that were provided in the Security Legislation Amendment (Terrorism) Act.

The advice I have in relation to that is that the Security Legislation Amendment (Terrorism) Act does not, as I think is being suggested, exempt from prosecution protesters and industrial campaigners who cause and intend to cause serious damage to

property, or destroy or seriously disrupt an electronic system, such as a telecommunications system. The exemption applies only where death, serious harm or endangerment is caused and the protester, et cetera, does not intend to cause the death, harm or endangerment. Therefore, the fact that the sabotage offences do not include an exemption for protesters is consistent with the Commonwealth act, because the sabotage offences only concern damage and disruption to public facilities and do not include elements relating to harm that may be caused to persons.

Secondly, the term "terrorist act" is broadly defined in the Commonwealth legislation and includes certain conduct that is done with the intention—again, we have to go back always to the intention—of advancing a political, religious or ideological cause with the intention of coercing or influencing a government by intimidation or intimidating the public or a section of the public. Since many, if not all, protests and strike actions would fall within this description, excluding protesters and those involved in industrial action is appropriate in those circumstances.

I will conclude on that point. I have simply sought to put in some context the government's position on the bill and to explain that, whilst the government supports Ms Tucker's amendment, which does perhaps add some comfort, the government's position is that it does not change the position in the bill as circulated. It perhaps provides some comfort to those that want comfort in terms of what is the government's intention. The government's position is that the provision is quite explicit in its attention to sabotage—sabotage as a separate offence, sabotage as an offence that demands the serious attention that this bill gives it, sabotage as an offence that should not be tolerated in any sense, sabotage as an offence that justly attracts a potential penalty of up to 25 years imprisonment.

We believe that the provision is quite explicit. We believe that the provision is justified. We believe that, in retrospect, the events in Bali and in New York in the last year and a half give extra force and effect to the need for jurisdictions to ensure that their legislation in relation to such issues is fit to meet the purpose. But, as I say, Ms Tucker quite rightly has concerns around democratic rights, individual liberties. These are issues that concern me, and in relation to which I have well articulated views and commitment.

To the extent that Ms Tucker believes that there is a need to put beyond all doubt any suggestion that this provision could affect the democratic right to protest, to demonstrate or to free speech, then the government is happy to accede to her desire for that to be achieved. But, in doing so, we do not resile from the position I have put that we do not believe that there is any circumstance in which the provision could possibly be used contrary to its intention of dealing with sabotage, a major offence dealing with major disruption, major economic loss and a major interference with infrastructure or property.

MR STEFANIAK (7.38): I will speak only once. My comments, I think, will be equally applicable to Kerrie Tucker's next amendment. I have a lot of sympathy with what the Chief Minister is saying in terms of what this provision actually intends and how the law actually does operate and will continue to operate not only in the ACT but, I would think, in the rest of this country.

I do have some sympathy with what she is trying to achieve, although I just do not think that it is really necessary to do so. I think the Chief Minister is quite right in saying that the intention of this provision is such that it would never be used for a proper, bona fide, peaceful strike, protest, demonstration or whatever. Also, it is rather hard to draft something to meet what she is trying to achieve. About a week back I gave her a couple of hints as to how to do so with another bill, but they probably were not terribly helpful. I must say that I do not necessarily think that the second draft totally achieves the purpose, either. Accordingly, the opposition will not be supporting this amendment, but appreciates that, obviously, the numbers are there for it to go through.

The Chief Minister mentioned that it really would not change anything at all. I have one little reservation about that which I will mention. But let me say at this stage that there are ample laws already in existence in terms of property that might get damaged during a strike or industrial action. There is a series of offences there. There are offences under the Commonwealth Crimes Act, for example, which are occasionally invoked in terms of Commonwealth property damaged during demonstrations. There are a number of offences which would be invoked under our own Crimes Act—for example, the offence of malicious damage. If, say, a demonstration got out of hand or if individuals at a demonstration which began peacefully then started smashing windows, that would not be an act of sabotage; it would be malicious damage.

The prosecution authorities in this country—in every single state and territory and the Commonwealth—would not, I would think, contemplate using these two provisions in terms of any damage done during a demonstration, even a demonstration that got out of hand. It has not happened so much in Australia, but I recall some of the damage done on occasions in strikes and industrial unrest in England. Perhaps one could argue that if a person intended to do such damage as to cause a major disruption to the use of services by the public such provisions could apply, and that may not be unreasonable in the circumstances. But I cannot think of an instance in Australia where any strike, industrial action or protest has led to damage that would invoke clause 123 or any threats to do such damage that would invoke clause 124.

The law as it stands in those areas—I have mentioned the Commonwealth Crimes Act, the offence of malicious damage under our own Crimes Act and several other offences—could be brought against a demonstrator or someone involved in a strike who went too far and damaged property. Those are the provisions that probably would be used. If the DPP in the ACT were silly enough to bring a charge under this provision, I think that they would fail because it would be an improper charge to bring unless the circumstances were such as to amount to actual sabotage. In my experience, that just does not happen in most demonstrations, pickets and strikes. I cannot think of its happening in this country. The coalminers strike of 1949 is a possibility, but even then I do not think it was so much a case of damage to property as one of people not working and taking industrial action.

The Chifley government sent in the troops just to get the coal moving, but I cannot recall mines being trashed then or anything like that. I really do not think that this amendment is necessary. If Ms Tucker wanted to cover that possibility which would probably never arise, I wonder whether this provision would actually do the job there. I suspect, just having had a quick look at it, that it may not. The Chief Minister says that it is totally innocuous and does not mean anything.

I wonder whether a person who takes part in a protest, strike or lockout and who does something completely against the aims of that protest, strike or lockout that might amount to anything would escape just punishment or a just charge for causing it. I am not certain there, but I suppose that that might occur. The numbers are there to see this amendment get up. The Chief Minister is probably right in saying that it is not going to affect the legislation much one way or the other. But, as I said earlier, quite clearly the intention of this provision—the Chief Minister was quite right in saying that it was there even before the events of September 11—is that it be used only in very specific circumstances.

There is ample law to cover damage caused by strikes and demonstrations and, on occasions, it is invoked when those things occur, and will continue to be. I think that this amendment is unnecessary. Also, I still have some doubts, even though this amendment is much better than the first cut, whether it will really do the job that Ms Tucker intends it to do. I have reservations about there being some problems there. Accordingly, we will not be supporting the amendment, although I note that other members of the Assembly will be.

MS DUNDAS (7.45): The ACT Democrats will be supporting this amendment. We were quite happy and pleased to work with both Ms Tucker's office and Mr Stanhope's office to reach what I believe is an agreeable outcome. As I stated earlier in discussing this bill, the offence of sabotage was defined broadly and student protests and industrial actions may be caught under "threat". The concern I had, along with Ms Tucker, was that a peaceful occupation by striking workers would be regarded as committing the offence of sabotage.

There are two elements to sabotage—property damage and the intention of major disruption or economic loss. Property damage includes the loss of the use or function of the property and the intention of industrial action is to bring attention to the plight of workers, which sometimes does mean intending a major disruption or economic loss, so I could see that it would be quite conceivable that this offence could be misused for union bashing in the future.

A lot of the debate on this amendment has focused on the fact that the piece of legislation on this particular offence was drafted before the tragic events of September 11, 2001. With civil liberties being threatened in other jurisdictions by so-called knee-jerk reactions, we need to ensure that we do not shut down society in order to protect it. While these offences are not necessarily a response to the events of September 11, the world has changed and these laws are quite happily going to be applied in the post-September 11 world.

Even though our current Attorney-General might not see the laws being applied in the ways that both Ms Tucker and I fear, we need to ensure that future attorneys-general will not see the laws being applied in the way that we currently fear. We are now going to have the offence of threat, the offence of hoax and the offence of sabotage on the ACT statute book. All those offences are quite wide-ranging in their effect and do have much in common. All could be misused by a less forgiving police force, DPP or attorney to shut down peaceful protests, the tent embassy or union picket lines, all of which could be seen to cause offence to somebody, to cause people to feel threatened or to cause economic loss to business or industry.

The amendment moved by Ms Tucker clarifies the situation and a person would not commit an offence against this provision because they took part in a protest, strike or lockout, one of the democratic freedoms that we hold dear in Australia. I am happy to support this amendment and glad that we have been able to have this debate in which everybody has stated that they could never see how this law could be used in that way and actually ensure that this law could never be used in the way in which we fear.

MR CORNWELL (7.48): I must say that I was very impressed with the Attorney-General's comments. In fact, I am surprised that Mr Stanhope has bothered to go along with Ms Tucker's amendment. I can only assume that the Labor Party has been rather skilfully trapped—I would not say conned—by the words of the amendment as it talks about strikes or lockouts, because if you look at the *Concise Oxford Dictionary* definition of sabotage, you will see, "Malicious or wanton destruction, especially by dissatisfied workmen or by hostile agents."

As I recall, the word "sabotage" comes from "sabot", the wooden shoe that French peasants wear. I seem to recall that in the late 1800s when there was some industrial disturbance, these shoes were being put on railway lines to stop trains—I may be wrong on that—or were being used to clog up fairly rudimentary pieces of machinery. Whatever, the fact is that the way the words "strike" and "lockout" have been put skilfully into this amendment may have influenced the government's view on it.

I am concerned about the other word, "protest", because, as you said, Mr Attorney, you and, presumably, your government were never in doubt that the existing legislation was adequate to cover any eventuality. We have had a great deal of talk about human rights and Ms Tucker has talked about peaceful assembly. In what category does the tearing down of the Woomera fence fit in this regard? What about the demonstrations at the World Trade Organisation meeting in Sydney? Is that peaceful assembly or middle-class anarchy?

Ms Tucker comes out and talks about the stance of the National Rifle Association in the USA on the right to bear arms and that sort of thing, conveniently ignoring evidence of considerable anarchy—not simple protest, but considerable anarchy—in Sydney and Woomera. I use those two simply as examples of the so-called peaceful demonstrations getting out of hand. Who is going to deal with that, Mr Attorney? Will this provision now allow this type of thing to go on in Canberra and a bunch of smart left wing lawyers to jump up and say, "Just a moment, please. Section 123 (2), given to us by courtesy of the Greens, provides that a person who takes part in a protest is exempt and the degree of exemption does fit with tearing down fences and behaving in a generally uncivilised fashion."

I wonder about that. I wonder whether you should reconsider voting against this proposal, Mr Attorney, because, as you said yourself, you felt that there was adequate control in the existing legislation. I am not at all convinced that we should be going along with this amendment. I do believe that there is a certain arrogance among many of these protesters and a belief that, because they think that it is right, therefore it is right. Many of them are misguided. Many of them, I repeat, are middle-class anarchists with indulgent parents who are quite happy to allow them to carry on like that.

Of course, the first thing that happens when there is any attempt to curb them is that everybody starts screaming about human rights. What about the other side? So far, I have heard lots of criticism of the police and allegations that sometimes they behave in a nefarious way. What about the police? What about the other people involved in this sort of thing? When you have such a group protesting violently in the streets, what effect does that have upon society? What effect does that have upon the discipline of people?

Ms Tucker finds it amusing, but Ms Tucker's idea, I have no doubt, of a Green government would be a bit like living in Puritan England without the hymns, I suggest. It would be a very boring place. But we must allow for Ms Tucker's sense of outrage against anything that appears to smack of an attack on proper, lawful demonstration. I do not mind peaceful marches, peaceful demonstrations of that nature, but I just feel that by slipping in "person takes part in a protest", which is unexplained, we are simply giving lawyers an opportunity to have a field day. I think that the government was right in the first place in its belief that the proposed legislation is adequate and we simply do not need this extra little spin to help the Greens' left-wing mates.

MS TUCKER (7.55): I think Mr Cornwell just spoke in support of my amendment, although I was a bit confused about the reference to a boring place of hymns. I could not quite see how that fitted in, Mr Cornwell, but maybe I just was not concentrating.

I would like to respond briefly to some of Mr Stanhope's points. I do not recall ever suggesting that this legislation was developed after the events of September 11. I do not know why Mr Stanhope suggested that I said that. I thought I had made it quite clear that the concerns that are coming quite broadly from the community on these pieces of legislation post-September 11 are that they can be used in a way that they would not have been used before and there are legitimate concerns about the potential for civil liberties to be diminished by the interpretation of existing laws in the climate of fear in which we now live.

I would also like to make quite clear, because Mr Stanhope may have misrepresented me, perhaps not intentionally, that I have not at any point said that I do not think there is concern regarding security threats in this country. When I bring an amendment like this to this place it is not because I do not think we need to be careful. It is about trying to achieve a balance. That is what I am trying to do with this amendment.

Mr Stanhope also spoke of the importance of intention. As I understand it, the intention that would also be looked at is the intention to cause disruption. It is not just about an intention to create a situation where a political point can be raised. I think that the question of intention can also go to the intention of actually causing a disruption. Taking the example of the black ban that I cited, there was an intention to disrupt the work situation because of an unacceptable work practice at that time. Also, that was classified as a major disruption, and a major disruption is one of the moot points in this regard.

This debate has been useful in terms of enabling the government which introduced the legislation to make clear the intention of it. I am not suggesting that this government would actually abuse this sort of legislation, but in creating law we have to take into account the potential for other interpretations. The debate today, apart from Mr Cornwell's contribution, would help any court to understand the intention of this legislation.

Amendment agreed to.

Clause 123, as amended, agreed to.

Clause 124.

MS TUCKER (7.59): I move amendment No 2 circulated in my name *[see schedule 5 at page 4191]*. I have already spoken to the amendment.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (7.59): I will take the opportunity to respond to a couple of points. The points I need to respond to in relation to comments made by both Mr Stefaniak and Mr Cornwell go to the import of Ms Tucker's amendments. It is essentially the same for both amendment No 1 and amendment No 2 and my comments apply to both.

It is important, in looking at Ms Tucker's amendments, to have particular regard to the words "only because". I do think with respect to Mr Cornwell and Mr Stefaniak that they have not taken sufficient notice of the importance or the impact of the words "only because" in Ms Tucker's amendments, the amendment currently being debated and the previous amendment.

The proposal in relation to the amendment we are currently debating commences, "To remove any doubt." That is what we are doing; we are removing any doubt. I have said what is the government's intention. I have given a good explanation of what, at law, the government's clause does. I have given, I am sure, a persuasive explanation of how it will be interpreted, how it will be used by the DPP, how it will be used by the police, how it will be dealt with in court. I say, and I do not resile from this, that under no circumstances will it be used by the police or the DPP or will it be interpreted in court as applying to protests, strikes or lockouts.

But there are some non-believers here. Ms Tucker is one. Ms Tucker says, "Let's put this beyond doubt." I say it, but Ms Tucker chooses not to believe me. Ms Tucker says, "Let's put this beyond doubt," so she moves an amendment to remove any doubt. "A person does not commit an offence against this section only because"—only because—"the person intends to or threatens to take part in a protest, strike or lockout."

If a person takes part in a strike, a protest or a lockout, and commits sabotage, then the full force of the law will fall on them. That is what we have done today. We have said, "You can have a strike, you can have a protest, you can have a lockout, but if in the course of the strike, the protest or the lockout you commit sabotage, then we will charge you with sabotage. But if you are just protesting, striking or involved in a lockout, then we won't." That is what we have done, and I am happy with that.

It is like a mini bill of rights. That is what it is; we are agreeing to a mini bill of rights. We are acknowledging that in a free and democratic nation such as Australia, particularly in the ACT, there is a right to protest, strike or be engaged in a lockout. That is what we are doing; we are saying that we acknowledge these as rights. But what we

are saying is: "No matter what you do, no matter how you behave, if you commit sabotage, you will be prosecuted." That is what we have done.

Ms Tucker, I wanted to respond to assure you that I was not impugning you in any way. I was not for a second suggesting that you do not take as seriously as the rest of us the need for us, as a community, to be fully aware of the issues we face as a result of terrorist acts. That was not in my mind for a second. I regret that you thought that I might have been suggesting otherwise; I certainly was not. I know that you take these issues very seriously. I respect fully your respect for civil liberties and for rights. I acknowledge that, and acknowledge it absolutely.

I do not appreciate or engage in the notion that, if somebody supports civil liberties, therefore they are soft on terrorism. I cannot abide that sort of cheap point scoring.

MR STEFANIAK (8.03): I will not go over what I said before. I still have the same concerns, although I will say for the benefit of any judge or magistrate who might be trying to interpret the legislation that they should take heed of what the Chief Minister just said in relation to someone committing an act of sabotage after they have engaged in a strike or protest. This amendment would not stop the clause being invoked were that the case.

I think that that is a very good expose of what at least the Chief Minister thinks is the import of this provision. If it is the case that that is how it should be interpreted, we may not go too far wrong there. I got a bit worried, I must say, when Ms Tucker said that this situation is very similar to something that happened in New Zealand and Canada.

I do not necessarily know if we should be slavishly following other jurisdictions there. I have concerns about a few things that those countries do, but that is by the by. But I need to make that point in terms of statutory interpretation because I quite like the Chief Minister's interpretation. It might not be completely right, but if that is what he says the government feels, if that is its intention, the opposition would certainly support those sentiments, even though we have some problems with what Ms Tucker is actually proposing.

Amendment agreed to.

Clause 124, as amended, agreed to.

Clauses 125 to 127, by leave, taken together and agreed to.

Schedule 1.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (8.05): Mr Speaker, I regret that I did not take the opportunity earlier to table a revised supplementary explanatory memorandum dealing with the amendments that I have moved tonight. I do so now. Mr Speaker, I seek leave to move together amendments Nos 11 to 15 circulated in my name.

Leave granted.

MR STANHOPE: Mr Speaker, I move amendments Nos 11 to 15 circulated in my name *[see schedule 3 at page 4186]*.

Mr Speaker, amendment No 11 corrects an oversight and repeals section 3 of the Crimes Act 1900. Amendment No 12 will adjust the Legislation Act 2001 so that where an offence only refers to a penalty of imprisonment of 10 years or more, the monetary penalty that can be imposed on a corporation is 1,500 penalty units or $150,000. This is consistent with monetary penalties that apply for offences with similar prison terms in the code.

Amendment No 13 will add a note to the Prostitution Act in the same terms as the notes being added to other legislation in Schedule 1 of the bill. It will also adjust other provisions of that act to remove references that have been repealed. I need to look at that closely. I probably need to confirm that one can engage in prostitution without committing sabotage. I am sure that it does not go to that matter.

Amendment No 14 in this part will add a provision to the Territory Records Act to make it clear that the criminal code applies to offences under that act. The offence in section 52 of the Territory Records Act will also be reworded in code compliant terms, but the effect of the offence will remain the same. Amendment No 15 is a technical amendment to correct a minor drafting error. The amendment will replace the word "*omit*" with "*substitute*".

Amendments agreed to.

Schedule 1, as amended, agreed to.

Dictionary.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (8.08): I seek leave to move together amendments Nos 16 and 17 circulated in my name.

Leave granted.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (8.09): I move amendments Nos 16 and 17 circulated in my name *[see schedule 3 at page 4186]*.

Mr Speaker, I gave an explanation before that these amendments will insert definitions of the terms "harm" and "serious harm" in the dictionary in accordance with the definition of those terms recommended by the Model Criminal Code Officers Committee in its report on fatal and non-fatal offences.

MR STEFANIAK (8.09): These dictionary amendments apply to several clauses of the bill and I do not have a particular problem with "harm", but I wish to make one comment in relation to "serious harm" as a result of the Chief Minister's amendment to proposed section 42 (3). I have no problem at all with the amendment whereby he took out "really serious harm", or whatever it was, and made it "serious harm" in terms of paragraph (a),

which relates to something that endangers or is likely to endanger human life. That is obvious.

I have a bit of concern in relation to paragraph (b), which relates to harm which is or is likely to be significant and longstanding. In other words, the definition will read, "Serious harm means any harm, including the cumulative effect of more than one harm, that is, or is likely to be, significant and longstanding," which comes back to the problem I have in relation to proposed section 42 (3).

There was a case in Canberra not all that long ago—I don't know if the police got the culprit—involving a very brave woman who was burgled by, I think, a 15 or 16-year-old burglar and she had the presence of mind to whack him with a cricket bat, although he was a big kid, and off he went. I think she was praised by the police and written up in the *Canberra Times* most favourably. She was protecting her property.

I do not know whether she actually did any significant injury to him, but what if she had broken his arm? A broken arm is not insignificant. It is also quite longstanding. I can see Mr Hargreaves over there with his foot on the desk. He has a broken foot. That has been pretty longstanding for poor old John, having broken it down at Narooma. He will not be out of plaster for a little while yet, so I would have to say that his is a pretty longstanding injury.

What would happen if that occurred to a burglar in the course of burgling a place and the person getting rid of the burglar was not threatened by the burglar? I am not going to attempt to amend this provision because I can read numbers, but I think we need to look at it very carefully. I do have concerns with the second leg of "serious harm" in terms of proposed section 42 (3), which has been agreed to by this Assembly. I think that some concerns could arise there. That is something we will be monitoring very closely.

Amendments agreed to.

Dictionary, as amended, agreed to.

Title agreed to.

Question proposed:

> That the bill, as amended, be agreed to.

MR STEFANIAK: I seek leave to make some brief comments in relation to the first amendment. I attempted to do so when your deputy was in the chair and it was felt that a more appropriate time for that would be at the end of the consideration of the bill.

Leave granted.

MR STEFANIAK: I think that Ms Dundas misinterpreted the bill in some comments she made in her speech at the in-principle stage and I wish to take issue with those comments. This bill is a criminal code bill. It deals with a number of offences and issues of criminal responsibility. It does not deal with things such as the number of prisoners,

which Ms Dundas actually mentioned. She did not seem very happy that the ACT had the least number of prisoners of any state or territory.

She also made comments about being happy that the government is not going into law and order auctions, as occurs interstate. I have said in the past I do not think a law and order auction is necessarily a bad thing. This bill is not about things like the number of prisoners, but if it were a fact that we had less crime than other states or territories, that we had fewer offences per head of population than other states or territories and that accounted for us having a smaller prison population, it would be a source of great pride to the territory, but it is not necessarily something to gloat about as the ACT it is right up there with the other states and territories per head of population on a number of offences.

As someone who has been involved in the court system here and interstate, I certainly think that there are a large number of victims and other members of the general public who wonder at times about excessively lenient sentences coming out of our courts. I do not think that it is a source of pride to say that we have the lowest prison population in the country, as we still have reasonably high crime rates in many instances.

I wanted to make that point. In fact, not only would I like to see us having a national criminal code, but also I think that it would be very sensible if it were followed up at some stage by a national sentencing code and several other codes so that there was consistency right across the Commonwealth.

Bill, as amended, agreed to.

Planning and Land Bill 2002
Detail stage

Clause 1.

Debate resumed from 21 November 2002.

Clause 1 agreed to.

Clause 2.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.16): I move amendment No 1 circulated in my name *[see schedule 6 at page 4192]*, and I present the explanatory statement to the government amendments to this bill.

This is a straightforward amendment that inserts a new commencement date for the act of 1 July 2003. This will allow both the new Planning and Land Authority and the new government Land Development Agency to formally commence their operations at the beginning of the next financial year.

Amendment agreed to.

Clause 2, as amended, agreed to.

Clauses 3 and 4, by leave, taken together and agreed to.

Proposed new clause 4A.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.18): Mr Speaker, I move amendment No 2 circulated in my name *[see schedule 6 at page 4192]*.

The proposed amendment inserts a new clause 4A providing for the application of the criminal code in respect of offences under this act. This is essentially a machinery provision, which allows for the application of the new model criminal code in relation to all the functions in this bill.

Proposed new clause 4A agreed to.

Clauses 5 to 7, by leave, taken together and agreed to.

Clause 8.

MRS DUNNE (8.19): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 7 at page 4199]*.

This amendment and the three following it are procedural amendments to take out elements of the functions of the Land Development Authority which the Canberra Liberals consider are best placed in another part of the bureaucracy. The authority has a number of functions in relation to the administration of planning matters. It is our view that the administration of the digital cadastral database, for instance, would be better carried out by a subset of the Department of Urban Services. It is not entirely a planning matter and relates to other areas, as is the case with the next amendment, which refers to the regulation of the building industry and the provision of administrative support and facilities to the Land Development Council.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.20): The government will not be supporting this amendment. Mrs Dunne's amendment essentially provides for the removal of a function from the proposed new Planning and Land Authority, the function of providing information from the cadastral database. The government will not support it because we see these issues of the management of the cadastre and the management of other relevant land information to be central to the functions of a planning and land authority. We believe it is completely inappropriate that they be removed from the role of the proposed authority.

This sort of information is important in putting together the sorts of planning instruments and broader planning policies for which the authority will have responsibility. To remove it from the authority's purview will undermine the capacity of the authority to undertake its roles fully.

MS TUCKER (8.21): The Greens will not be supporting this amendment either. I have not been given any valid reasons for it to be removed from the authority's functions. As Minister Corbell just explained, the digital cadastral database seems to me entirely relevant to the functions of the authority.

MS DUNDAS (8.21): The Australian Democrats also will not be supporting Mrs Dunne's amendments here. I understand where they come from after having seen submissions to the committee inquiry into this bill, in which some organisations indicated that they thought the government should retain some form of planning department separate from the Planning and Land Authority.

I am definitely not opposed in principle to the minister retaining some form of professional advice outside the authority. It will help maintain the independence of the authority and will also give the minister greater access to alternative sources of advice. It may also solve the problem that we have seen occurring in other statutory bodies, where an authority is sometimes put in a difficult situation when it both tries to advise the minister and maintain an independent stance.

However, I don't believe that to do this we need to take away these particular functions from the authority. I believe that there is nothing in this bill preventing the government from establishing a separate planning section as part of its administrative arrangements. Part of the usefulness of the new authority is its ability to integrate a number of functions that may presently be handled by different agencies, and community and business have generally welcomed this improvement. Taking out these functions of the agency would once again split up a number of different areas, and has the potential to create unnecessary red tape in the planning process.

Amendment negatived.

MRS DUNNE (8.23): I move amendment No 2 circulated in my name *[see schedule 7 at page 4199]*.

I will be brief because I know I am going to go down. This is the same argument. The digital cadastral database and the land information services are not issues that relate directly to planning and are subsidiary to it. They are not, as far as the Canberra Liberals are concerned, functions that are necessarily part of a planning authority. They would be better placed in another part of the government.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.24): Mr Speaker, the government will not be supporting this amendment, for the same reasons that I outlined in relation to the previous amendment. I think it is worth pointing out to members that this is a planning and land authority. It is not a planning authority alone, it is a planning and land authority. One of its key functions is land management, the management of the land asset on behalf of the Canberra community.

Clearly, when the authority has within its purview the necessary land management functions and maintenance of information about land, it can manage the land asset most effectively on behalf of the Canberra community.

In relation to this amendment No 2, which deals with land information as opposed to the cadastral database, it is not a provision the government will support.

Amendment negatived.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.25): Mr Speaker, I move amendment No 3 circulated in my name *[see schedule 6 at page 4192]*.

Mr Speaker, amendment No 3 inserts a note after clause 8 (1) (g) to make clearer the source of the Planning and Land Authority's authorisation to grant leases. This is principally related to ensuring that the power of the executive to grant leases is properly communicated through the activities of the Planning and Land Authority. It clarifies the relationship and indicates where the respective powers rest.

Amendment agreed to.

MRS DUNNE (8.26): Mr Speaker, I move amendment No 3 circulated in my name *[see schedule 7 at page 4199]*.

My amendment No 3 removes 8 (1) (j), the regulation of the building industry, from the functions of the Planning and Land Authority. It is our view that the regulation of the building industry—the control of building, electrical and plumbing services and such areas—should stand outside the act. These are already governed by the Building Act and should not be functions of the Land and Planning Authority. The role of the building regulator should be separate from that of the planning regulator.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.27): Mr Speaker, the government will not be supporting this amendment. I think Mrs Dunne has not made a good enough argument as to why the building regulation activity should be separate from the Planning and Land Authority. She says it should not be there, but she does not say why.

From the government's perspective, it is a more streamlined process to have building regulation as part of the planning authority. We believe it is important, because building regulation is an important follow-through after development approval. Given that you are dealing with the same industry, the same players and the same applicants, it is far cleaner if is managed consistently through a single organisation.

If Mrs Dunne has a substantial reason for not including building regulations in planning, apart from the assertion they should not be there, then I think it is important that the Assembly hears that. However, simply asserting that they should not be there, without analysing why they should not—given that you are then separating two parts of the activity from the agency that would otherwise deal with the players all the way through—is a concern. The government will not support the amendment.

Amendment negatived.

MRS DUNNE (8.28): Mr Speaker, I move amendment No 4 circulated in my name *[see schedule 7 at page 4199]*.

Mr Speaker, my amendment No 4 removes clause 8 (1) (n), which is to provide administrative support and facilities for the council. Throughout this process of introducing the Planning and Land Bill, the government has waxed lyrical about transparency and an arm's-length approach. The concern that was expressed on a number of occasions, through the inquiry of the planning and environment committee into this matter, was that the transparency that the minister is so fond of speaking about was not always available.

Although this is a small matter, it is a matter of transparency. It is fine for the minister to say that this is a seamless approach, it is the one organisation, it deals with everything, it is neat and it is tidy. However, in this case, it is not neat and tidy, because the Planning and Land Council has a job to do which will sometimes involve it being critical of the organisation that it is overseeing, the Planning and Land Authority. It would be better for the independence of the council if the secretariat services were provided by a body other than the Planning and Land Authority.

This is a matter of transparency and of the independence of the council, and the minister has gone to some pains to make it clear that this is an independent council. Let's demonstrate that it is independent by providing it with a secretariat service which is independent of the body that it is overseeing.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.30): Mr Speaker, the government will not support this amendment from Mrs Dunne. Mrs Dunne is wrong in saying that the Planning and Land Council oversees the Planning and Land Authority. It does not. It is not a governing board, and it does not have responsibility for the operations or the activities of the Planning and Land Authority.

Its role is to provide advice on specified matters as outlined either in the act or in subsequent regulations. Its role is to provide expert advice on matters related to large, contentious or other classes of development application, to advise on the issues that may warrant the minister of the day exercising the call-in power, and to advise on variations to the Territory Plan and other potential master planning activity. Its role is advisory. It provides expert advice on key planning issues. It does not oversee the Planning and Land Authority.

What Mrs Dunne's last three amendments—and this one as well—attempt to do is establish the argument that there should be a separate department of planning outside of the Planning and Land Authority by saying, "We will try to excise these activities and essentially make the argument for a separate planning department."

The government is not convinced at all of the need for a separate planning department. Indeed, the standing committee report that Mrs Dunne refers to did not, in of itself, recommend the establishment of a separate planning department. It suggested that the government consider this matter further, but it did not recommend that there should be a separate department. That may be a fine line, nevertheless it was not a substantive recommendation of the committee.

In a small jurisdiction such as the ACT, we have the opportunity to build a contemporary model. It does not have to be a model such as those in other jurisdictions. We are small and so it is difficult to justify having a great multitude of separate agencies, authorities and so on. To suggest that, in a jurisdiction the size of the ACT, we should have both a planning and land authority and a planning department, I think is really an attempt by the Liberals to maintain the status quo, where we have a planning authority vested in one person, the executive director of PALM, and we have PALM as a unit of the Department of Urban Services.

That approach has not worked. It is the rationale behind the establishment of the new planning approach. That is one of the reasons the government is committed to the establishment of a new planning and land authority. Indeed, to try to argue that certain planning functions should be outside of the role of the Planning and Land Authority sets the stage for a conflict between a potential new department of planning and the Planning and Land Authority. It is not the approach the government wants to see. The government would prefer to see these functions undertaken by the Planning and Land Authority, and build a contemporary model of governance that provides for both a statutory independent agency, as well as an agency that provides the necessary policy support and advice to the government and the Assembly of the day.

The government will not support this amendment. The Planning and Land Council is advisory, not governing. I have no doubt that, given the calibre of members that should be appointed to it, it will be able to exercise its functions appropriately under the model the government has proposed.

MRS CROSS (8.34): Mrs Dunne delivered her amendments to my office yesterday afternoon. I instructed my chief of staff to write to Mrs Dunne to invite her to brief me on those amendments, and I am advised that Mrs Dunne has not telephoned to make that appointment.

It would seem appropriate, at this stage, to put on the record my policy concerning support for motions and amendments in this place. As I have said several times, I will judge each amendment, bill and motion on its merits. The sole criterion I will apply is whether the matter under consideration is to the benefit of the people of Canberra. Unfortunately, it is not possible for me to act in the interests of the people of Canberra if I am not properly briefed.

On the face of it, Mrs Dunne's amendments may have attracted my support. However, I regret that I cannot, in all conscience, support them when Mrs Dunne has not been able to find the time in her busy schedule to brief me on what she is attempting to do. Put simply, it would be irresponsible of me to pass laws without proper consideration.

MS TUCKER (8.35): I want to comment on some of the points made by Mrs Dunne and by the minister. I did not hear the minister respond to one point that Mrs Dunne made. She had some concerns about the fact that the council would be supported by people who may have to comply with a particular government position, as I understand it.

Mrs Dunne: No.

MS TUCKER: That is not what you said? I thought you were saying that the independence of the council could be threatened by the fact that it was supported by the authority.

Mrs Dunne: Yes, but not because it holds a particular government position.

MS TUCKER: No, but you felt that its independence could be compromised. I think that is a reasonable point to make and I did not hear Mr Corbell respond to that. The point I want to make is that, while I am leaving these functions with the authority at this point, I would be interested in keeping an eye on them. Mr Corbell has said that the calibre of the people appointed will ensure that a good job is done and so on, that the council will not override the authority, and that the authority will have to ask for and consider the council's advice.

There have been problems with other consultative mechanisms that have been set up by previous governments and which are supported by government people who have a particular agenda. That is fine as it is their job, but there have been complaints from the community that those government people have not necessarily supported the community in the way it wanted. I understand the arguments of the minister in favour of having this provision, but I also acknowledge the points that Mrs Dunne has made. We should keep an eye on this. I am sure people in the community will let us know if they are concerned about it.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.37): Mr Speaker, I want to respond, through you, to the comments Ms Tucker has made. I appreciate her position and I thank her for her support. However, I think the key issue here is the amendment suggesting that the fact that the secretariat support to the Planning and Land Council is provided by the Planning and Land Authority staff potentially threatens the independence of the Planning and Land Council. If that is the case, the same could be said for any government officer supporting the activity of the Planning and Land Council. I think it is stretching a bit too far to make that assertion.

If the concern is that the government is going to use its influence, through secretariat support to the council, to deny information to the council and so on, then it does not matter where it happens. It does not matter whether it comes out of the Planning and Land Authority or out of a mainstream department: at the end of the day, these officers are ultimately public servants.

I think the more reasonable point should be made that the Planning and Land Council will be reliant on information from the Planning and Land Authority in giving its advice. If the advice is about, say, a development application, particularly a major development application, on which it has a statutory responsibility to comment, it will have to get that information from the Planning and Land Authority, because that is where the information will have been lodged in the first place. The information will come from that authority.

The authority will have to take into account the advice of the council before it makes decisions on such an application. At the end of the day, the authority will be the decision maker on a development application. However, it must have regard to the council's

advice and the council's advice will be publicly available, so there are safeguards and there is transparency in the arrangement.

I fail to see how purely straight secretariat or administrative support can undermine the capacity of the council to act independently, whether it is from the authority or not. At the end of the day, it is part of the machinery of government. If government was serious about exerting its influence in that way, which I believe would be quite improper, it would not matter where the relevant officers came from, the government could potentially exert that influence. I do not believe it is the case.

I believe that the council will operate professionally. If the council itself believed it was being stymied, there would be the opportunity for the chair of the council to go to the relevant minister and say, "I am not getting the information that my council needs. I want you to fix it." The council has the capacity to do that. It is a circumstance that is highly unlikely to occur, and that is why the government supports the arrangements as they are outlined in the bill.

I take Ms Tucker's comments on board: we clearly have to monitor the operation of the new council. However, I am confident that the arrangements are transparent and that the necessary mechanisms exist to prevent the sort of occurrences that Ms Tucker and, obviously, Mrs Dunne are concerned about.

MS TUCKER (8.41): I can speak twice on amendments, can't I? I just wanted to address one thing Mr Corbell said. It can be more subtle than potentially stymieing the work of a body. It can actually involve work practices in providing the council with information and so on, which we have certainly experienced in LAPACs, where there was a substantial overload. There can almost be an advocacy role in the support function of secretariat to any group, council or whatever.

While I accept that the secretariat support would most likely be from government, although there are other ways of dealing with it, the concern is that, if it is all handled by the authority—and I can see the potential advantage in having everything within the authority's functions—that approach could also be disadvantageous, if it is not actually carried through in good faith. As I said, there can be problems with the practices of the secretariat and of the authority itself, with time frames and so on. A lot of people learned that by bitter experience in the LAPACs. I accept Mr Corbell's reassurances but, as I said, we will all keep an eye on the situation.

Amendment negatived.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.42): Mr Speaker, I move amendment No 4 circulated in my name *[see schedule 6 at page 4192]*.

This is a new amendment that adds new clauses 8 (1) (o) and 8 (1) (p), providing that the functions of the Planning and Land Authority include requirements to ensure that there is effective community consultation and participation in planning decisions, and to promote public education and understanding of the planning process by providing information and documentation.

This amendment is proposed by the government following discussions between the government and other members. This was initially proposed by Ms Dundas and I am pleased that the government is able to support this proposal. I think this is a good suggestion that provides for one of the functions of the authority to be promoting effective community consultation and participation, and providing public information on planning issues and objectives. These are valuable additions to the functions of the authority. They state up-front the expectations this Assembly will have of the new authority in regard to the issues covered in the amendment.

MRS DUNNE (8.44): The Canberra Liberals will be supporting this amendment because, as the minister has said, it takes on some very good suggestions from the ACT Democrats about community consultation and providing education about the planning process, which as we all know is often needed in this town.

I wish to take this opportunity to pay testimony to the minister's willingness to embrace many of the recommendations and amendments put forward by the opposition and the crossbenches through the very useful round table meetings that were conducted last week and the week before. Those members and parties who attended came to an understanding of the motivations for amendments. In many cases, the minister and his team were able to take on amendments that were being suggested by the crossbenches. It was useful for all of us who attended. This amendment is an example of one of those excellent suggestions which were taken on board.

MS DUNDAS (8.45): As has already been said, the Democrats worked to develop this amendment and I thank the minister for adopting it as one of the government's amendments. The amendment was developed in response to the lack of attention paid to the role of the authority in liaising with the community. As I have said previously and repeatedly, the original bill seemed to have been developed from the perspective that planning was the sole provenance of professionals, to be done behind closed doors. The ACT Democrats do not agree with this position at all.

A planning system should not have input only from professional planners. Planning is also about trying to turn the needs and desires of the people of Canberra into a vision for the future of this city. Planning should not take just a top-down approach, where governments or bureaucracies tell people what is good for them. Instead, it should be a collaboration between government and residents to tap into grassroots ideas and develop them through a fair and balanced planning process. A good planning system involves public participation in decision-making, leading to outcomes that the people of Canberra will not only have confidence in, but that they feel they have contributed to and own.

The amendment goes some way towards recognising the role of this new authority in engaging the community in the planning process. The amendment also recognises the role of the new authority as not just a regulator, but also an educator.

I have noted that a number of problems about which residents come to me result from poor access to planning information and a misunderstanding of the planning process in Canberra. The role of planners goes beyond simply providing professional advice. It should and does include ensuring that residents have easy access to information and

documentation, and engaging the community so that the planning process is correctly understood and appreciated by all.

The Australian Democrats and I believe that the areas of participation and education are just as important as any other functions of the authority proposed in this bill, and that they deserve the equal recognition and enforcement that will be brought about by this change.

To echo the comments made by Mrs Dunne about the process, I will say that this amendment is an example of how well the round table process works. I thank the minister for bringing that about, so that we could address concerns with the bill in an open and easy discussion. The process was incredibly useful and allowed us all to share our opinions and understand each other's positions. It also allowed the government to respond to a number of concerns with the bill, and it allowed us, as non-government members, to understand the government's position.

I was glad to see the minister adopt a more cooperative process than had appeared to be connected to this bill previously. I hope this experience will improve the government's opinion of this approach to dealing with complex legislation, as the round table approach does enable a far smoother and more informed debate than trying to deal with a multitude of amendments from all directions, on the floor, on the night.

Amendment agreed to.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.48): I move amendment No 5 circulated in my name *[see schedule 6 at page 4192]*.

Amendment No 5 circulated in my name clarifies how the authority exercises its functions in relation to sustainable development. The authority must not only have regard to sustainable development, but must also take into consideration the statement of planning intent given to it by the minister, which is in clause 13 of the bill.

In discussion with crossbench members and opposition members, it became clear that some members wanted to see a range of issues such as, say, affordable housing, formally and explicitly stated in the legislation as an objective that the authority should strive towards. The government shied away from that approach, not because it does not agree that issues such as affordable housing are important, because they are, but because once you start listing the specific types of issues to which the authority must have regard in performing its functions, you could get a very long list—affordable housing, social justice issues, and a whole range of things.

The government has taken the view that the policy of the government of the day will very significantly govern or drive the issues that are emphasised by the authority, because they are policy issues which are the preserve of the government. The government anticipates that these issues are best dealt with through the capacity to outline them in the statement of planning intent.

This clause simply says that, in having regard to the exercise of its functions, the authority does not simply have to take account of sustainable development, but any other important policy issues that are raised in the statement of planning intent. That gives the authority the capacity to take on board issues such as, say, affordable housing. I think the current government would want to make its policy on such matters clear to the new authority if and when it is established.

MRS DUNNE (8.51): The opposition will be opposing this amendment. As the bill currently stands, it requires that the authority exercise its functions in a way that has regard to sustainable development. This is something that the opposition is prepared to support. However, for a long time the opposition has had a problem with the concept of the statement of planning intent. This has been a matter of some contention between the opposition and the minister since the outset of this debate, as we have seen.

Under the bill, the minister will be able to give the authority a statement that sets out the main principles that are to govern planning and land development in the ACT, as described in clause 13. The point was made quite cogently by one of the crossbench members at the round table meeting that there is very little difference between the statement of planning intent and the directions power that the minister already has under the land act, which is reinforced in this bill.

Neither the explanatory memorandum, the presentation speech nor any of the comments made subsequently by the minister clarify what is proposed by the statement of planning intent. It is still a vague wish list. During the round table meeting, I sought an undertaking from the minister that he would provide a better definition of the statement of planning intent: that has not been forthcoming.

In the absence of further explanation, it is difficult to distil the role of the statement of planning intent when the Territory Plan sets out planning principles and policies, as it currently does, particularly in the strategic principles set out in appendix A2 of the plan. As I have already said, the planning minister can give written directions both on the general policy the authority must follow and on the revision of the Territory Plan. It is the view of the opposition, as it is also of many of the organisations that made submissions to the planning and environment committee, that at best the statement of planning intent is superfluous, and at worst it is an instrument that could be used to the great detriment of people in the ACT.

That would not occur if the minister acted in good faith but, at some stage, you may find in power a minister who does not act in good faith in this matter. It has the potential to be a dangerous implement. In this regard, the opposition opposes this clause and proposes to oppose all mention of the statement of planning intent wherever it occurs throughout this bill.

MS DUNDAS (8.54): The Democrats do not oppose the statement of planning intent. As Mrs Dunne has already mentioned, as did a number of others who made submissions to the committee inquiry, we did have concerns with the potential use of the statement of planning intent.

I have no problems in principle with the statement as a document that sets out the broad planning intentions of the government, and is then able to provide indications to the authority about the intentions of the government for the planning system. However, the original form of the statement of planning intent did raise alarm bells because of uncertainty about the extent of its powers, how it would be used and what weight it actually had.

The series of government amendments 5, 6, 8 and 9 ensures that the statement of planning intent is not inconsistent with the Territory Plan, and goes to changing the bill to allow the new authority to take into consideration the statement of planning intent without formally being bound by it. I believe that this change increases the independence of the authority and helps prevent the statement being used as a tool for the control of the authority by government, which is one of the fears that we had with the original legislation.

I am happy to support these amendments discussing the statement of planning intent, as I believe they more clearly spell out the role of the statement and help protect the independence of the authority, one of the key issues that were raised again and again through the debate on this piece of legislation.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.56): I do not want to pre-empt discussion on the following clauses, which deal primarily with the statement of planning intent, but to respond very briefly to comments that Ms Dundas made.

The government has spelt out clearly what the purpose is of the statement of planning intent. It is the opportunity for the government of the day, particularly a newly elected government, which may have been elected on a sweeping platform of change, a change of direction, or a change of policy framework on planning, to communicate formally to the authority its policy intentions and objectives. Really, we as a government were seeking to draw the distinction between a specific direction that would be given on a particular matter or issue, and the capacity to talk more holistically about the policy objectives, frameworks and activities that the government of the day wanted to implement in planning.

The government has acknowledged the concerns raised by other members about the potential capacity of the statement of planning intent to override the Territory Plan and other statutory planning activities. That was never the intention of the statement of planning intent, and the government is happy to further clarify those matters in the amendments which will be outlined and discussed subsequently.

The statement of planning intent is the opportunity for the government to communicate its broad directions to the authority and have the authority take those into account without being bound by them. This amendment says that, when it comes to the authority exercising its functions, that must not be done solely in regard to issues about sustainability, but also about other matters such as, say, housing affordability, or other such things that are raised in the statement of planning intent.

MS TUCKER (8.58): The Greens will be supporting this amendment, but I think it does need to be looked at in conjunction with the amendments to clause 9. Obviously, that has been the centre of discussion here, particularly in relation to the statement of planning intent. It is now clear that the change to clause 9 and this amendment ensure that the statement of planning intent remains subordinate to the Territory Plan. As the Territory Plan can only be altered by the Assembly, I do not see any problem with the government having the opportunity to make clear what its general intentions are for its term in office.

Question put:

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

The Assembly voted—

Ayes, 11		Noes, 6
Mr Berry	Ms MacDonald	Mr Cornwell
Mr Corbell	Mr Quinlan	Mrs Dunne
Mrs Cross	Mr Stanhope	Mr Humphries
Ms Dundas	Ms Tucker	Mr Pratt
Ms Gallagher	Mr Wood	Mr Smyth
Mr Hargreaves		Mr Stefaniak

Question so resolved in the affirmative.

Amendment agreed to.

Clause 8, as amended, agreed to.

Clause 9.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.03): Mr Speaker, I move amendment No 6 circulated in my name *[see schedule 6 at page 4192]*.

This amendment omits the requirement in clause 9 that the Planning and Land Authority comply with the statement of planning intent. As I foreshadowed in the debate on the earlier amendment, following concern from other members that the statement of planning intent could override statutory planning functions, we have omitted the requirement that the statement of planning intent acts as a direction and must be complied with in full by the authority.

It is now a requirement that the authority take into account the statement in considering the exercising of its function. It becomes a matter that must be taken into consideration, rather than a direction to be complied with. We believe this clarifies the role of the statement of planning intent, as distinct from the directions powers also proposed in the bill.

Amendment agreed to.

Clause 9, as amended, agreed to.

Clause 10 agreed to.

Clause 11.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.05): I move amendment No 7 circulated in my name *[see schedule 6 at page 4192]*.

Mr Speaker, this amendment amends clause 11 to add the requirement to present to the Legislative Assembly, within six sitting days, a copy of a direction given by the minister to the planning and land authorities.

The purpose of the amendment is to provide that, if it is not possible to present to the Assembly within 14 days such direction because the Assembly is not sitting within that period, the minister must ensure that a copy of the direction is given to members of the Assembly within that 14-day period. This does not mean, though, that the direction will not be presented to the Assembly—the direction would be presented to the Assembly at the next available sitting opportunity. This clause ensures that a direction given by the minister to the authority is made known to members of the Assembly within two weeks, if the Assembly is not sitting within that period. Again, it enhances the transparency and accountability provisions of the direction's power.

MRS DUNNE (9.06): Could I seek your guidance please, Mr Speaker. I have an amendment which is similar to but adds to that of the minister. Is it possible to speak to that at the same time?

MR SPEAKER: My advice, Mrs Dunne, is that, if Mr Corbell's amendment succeeds, then you will not be able to put yours anyway. That is my advice—it is either/or.

MRS DUNNE: All right. It is not a die-in-a-ditch issue. Do not worry. It is not even a call-a-division issue.

The issue the minister's amendment addresses here is an important one and it goes to two questions. One is the issue of transparency and the members of the Assembly—and through them the members of the public—becoming aware of decisions of the authority in a timely fashion. The second issue is one of consistency. This again is a testament to the work put in at the round table because, throughout this piece of legislation, Mr Speaker, you will find this amendment, as it appears in clause 11 (3) and (4), appearing in a number of places. It does so in a way that means that, no matter what sort of decision is notifiable under the aegis of this legislation, it will be notified to the Assembly and to members of the Assembly, and through that to the community, in the same consistent way.

When we looked at this in the first instance, we looked at five, six or seven sitting days, and 14 days. This is, in fact, a very manageable and coherent approach. It is a testament to the round-table process that we have come up with this amendment.

Seeing that this one will succeed and therefore mine will fail, I will not bother to talk about it.

Amendment agreed to.

Clause 11, as amended, agreed to.

Clause 12 agreed to.

Clause 13.

MRS DUNNE (9.09): Mr Speaker, the opposition will be opposing this clause. This goes to the substantive question of the statement of planning intent. We have already had a discussion about the nature of the statement of planning intent.

Many of the amendments the minister deals with in relation to the statement of planning intent go some way to clarifying the issue, but not to the satisfaction of the opposition. During the round-table process, I asked that the definition in the dictionary be more transparent or that there be, at some stage, a note indicating the frequency and the sorts of occasions on which a statement of planning intent would be issued. That has not been forthcoming, Mr Speaker, and I think it is unsatisfactory to find a new piece, a new instrument or a new device to be incorporated into legislation. When you go to the dictionary to look for the definition of what a statement of planning intent is, it says, "Go to section 13." There is no proper definition of what a statement of planning intent is.

There has been some movement on the part of the government towards addressing some of the concerns of the opposition, the crossbenchers, and the community. At this stage, those concerns are not satisfactorily addressed, from our point of view. As a result, we will be opposing the statement of planning intent.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.11): I seek leave to move amendments Nos 8 and 9, circulated in my name, together.

Leave granted.

MR CORBELL: Mr Speaker, I move amendments 8 and 9 circulated in my name *[see schedule 6 at page 4192]*.

Amendments 8 and 9 deal with the issue of the statement of planning intent. Amendment 8 is the same as amendment 7, in that it provides for the statement of planning intent to be provided to members of the Assembly within 14 days after it is given to the authority, if the Assembly is not sitting within that 14-day period. It also requires that the minister needs to subsequently, in the next available sitting period, provide a copy of the statement of planning intent to the Assembly in session. In relation to amendment 8, it also makes consistent the periods of time to which Mrs Dunne alluded in her previous comments.

Mr Speaker, amendment 9 inserts a new clause to make clear the effect of the statement of planning intent. In particular, it makes clear that it does not authorise any person to do anything inconsistent with the Territory Plan. This matter was raised by members in discussion on the bill. Whilst it was never the intention of the government to permit the statement of planning intent to allow activity that might override or overrule the requirements of the Territory Plan, this clause makes that explicit.

It is important to add that the statement of planning intent can outline the government's intention to seek to vary the Territory Plan. For instance, had the statement of planning intent been available when this government was elected in November last year, one of the issues the government would have outlined in such a statement of planning intent would have been its intention to implement a 5 per cent limit on dual occupancy development in the territory, and to vary the Territory Plan accordingly. The statement of planning intent can outline the government's intention to vary the Territory Plan, but it does not authorise any person to do anything inconsistent with the existing provisions of the Territory Plan.

I trust this clarifies and addresses the concerns members have raised in relation to this clause.

Amendments agreed to.

Question put:

> That clause 13, as amended, be agreed to.

The Assembly voted—

Ayes, 11		Noes, 6
Mr Berry	Ms MacDonald	Mr Cornwell
Mr Corbell	Mr Quinlan	Mrs Dunne
Mrs Cross	Mr Stanhope	Mr Humphries
Ms Dundas	Ms Tucker	Mr Pratt
Ms Gallagher	Mr Wood	Mr Smyth
Mr Hargreaves		Mr Stefaniak

Question so resolved in the affirmative.

Clause 13, as amended, agreed to.

Clauses 14 and 15, by leave, taken together and agreed to.

Proposed new clause 15A.

MRS DUNNE (9.18): Mr Speaker, I move amendment No 7 circulated in my name, which inserts a new clause 15A *[see schedule 7 at page 4199]*.

The new clause 15A which the Canberra Liberals propose requires that the authority must appear before the relevant committee of the Legislative Assembly to report on its activities at least once every six months. This amendment comes directly from the recommendations of the Planning and Environment Committee report, which says at 4.14:

> The Committee recommends that the relationship between the authority and the Assembly be formalised by requiring the authority to report on its activities to the appropriate Assembly Committee at least once every 6 months.
>
> The functions of the Planning and Land Authority are vast, ranging from long-term strategic planning for the ACT through to the administration of planning and land development and the maintenance of information databases. In many ways, it is the court of first appeal in many functions relating to planning.
>
> It is the view of the Planning and Environment Committee that these functions should be closely scrutinised by the Legislative Assembly.

The standing committee which has responsibility for that in the present Assembly is the Planning and Environment Committee—not because we like the work, Mr Speaker, but because we are highly aware of the importance placed on planning by the people of the ACT.

This proposal is not without precedent. In the federal parliament, many major authorities are required to appear before their relevant committee on a six-monthly basis, as was the case with the former National Crime Authority, APRA and ASIC, to name a few.

In the spirit of transparency, the spirit of being accountable and providing an educative process—which we have already talked about in clause 8—and a community consultation process, it is appropriate that the community knows what is going on in the organisation. The authority should be able to answer questions on a regular basis before the appropriate planning committee, and the appropriate planning committee should have the capacity to investigate or interrogate on what is going on at any time.

I know the minister is not enamoured of this idea, and that the government response to the Planning and Environment Committee report has already ruled this out on the grounds that "there is already an annual report and anything else would be onerous and unnecessary".

In many ways, this is the most important piece of legislation administered by this Assembly. This is in fact the piece of legislation—and the accompanying piece of legislation that underpins it—that impacts most on the people of the ACT. It creates most ink for the *Canberra Times*, and it creates most angst for the people in this place and for people in the community. Although it might be a departure for this place, it is certainly not unprecedented.

It is fitting, especially in the teething stages, when this organisation is setting itself up, that it be subject to close scrutiny by the community. The best way to do that is through the operation of the appropriate committee. The Planning and Environment Committee in this Assembly operates very well and churns through the work. As members will notice, we have tabled our eleventh report today.

We take our responsibilities as a committee very seriously—to look into things, put our ideologies at the door and discuss and explore the issues. This is what this process would be. This is how the new model of a new polity and a new model of governance that this minister has talked about would be best assisted—by having this new level of transparency and accountability for an organisation. It may not be fun for the officers who run it to have to turn up before the committee to answer questions. However, they do that anyhow before our committee, and they do it very well.

I have great confidence that, if this amendment were to succeed, it would be of great benefit to the authority, to the government, to this Assembly, and to the broader community.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.23): Mr Speaker, the government believes this amendment is both unwarranted and unnecessary and will therefore not be supporting it.

It is unwarranted and unnecessary because there is no other statutory authority in the ACT that has a formal legislative requirement to report to the relevant committee of the Assembly on this sort of basis. In fact, there is no other statutory authority which has a requirement to appear before the relevant standing committee at all.

Not even the position of Auditor-General—the Auditor-General is indeed a creature of the Assembly, in that the Auditor-General reports only to the Assembly—is required to appear before the relevant standing committee of this place on a regular basis. Yes, the Auditor-General appears, but there is no legislative requirement for the Auditor-General to appear on a regular basis.

The same can be said of the planning authority. The planning authority will, of course, appear before the relevant standing committee to give information, evidence and advice on particular issues, as and when they emerge. There is every capacity in the legislation to allow the authority to do that, and to give its full and frank advice to the committee on issues the committee is considering, whether it is a draft variation to the Territory Plan or a broader policy issue relevant to the functions of the Planning and Land Authority.

I do not believe it is reasonable to insist that this authority, above all other authorities—even the Auditor-General—must appear regularly before the relevant standing committee in this place. The government argues that the existing reporting requirements are adequate, and indeed more than adequate. There is the annual report; the activities and finances of the authority are tested through both the estimates committee process and the annual report process, and there are other opportunities for the relevant standing committee to call the authority to give evidence. That is the intention of this government. It is the intention and the letter of this bill that allows for the authority to do that.

This authority is being required to comply with a transparent process in the tabling of information—when information is provided, how it is provided and when advice is given. There is a whole series of requirements that this Assembly is debating tonight, including the one we have just dealt with, which requires that any direction given by the minister to the authority must be tabled in this place within six sitting days, or provided

to all members of the Assembly within 14 working days, if the Assembly is not sitting in that period. The level of transparency and accountability is very high in this legislation. I do not believe the authority should be singled out, when no other statutory body—not even the Auditor-General—is required to report in this way.

I note that Mrs Dunne's amendment does not say that the authority should appear—it simply says that a report must be given. So that does not necessarily mean an appearance, but I guess that would be dependent upon the committee.

Mr Speaker, the amendment is unwarranted and unnecessary. I do not believe it is reasonable to assert that this authority, above all others, should be singled out for this level of scrutiny, given that the proposed levels of scrutiny and transparency in terms of information provided are already very high—as they should be—and have been agreed to by the government in the bill.

MS TUCKER (9.27): The Greens will not be supporting this amendment, for similar reasons to the ones expressed by Mr Corbell. I am not of the view that reporting is required twice a year. That is not a common practice, and would create unnecessary work for the authority, and also for the committee. However, if the committee is choosing to do this extra work, then that is obviously their decision.

I would not agree that this legislation requires this extra reporting above all the other areas of interest to the community. Mrs Dunne feels—and I respect her right to do that—that it is the most important area, but my view is that there are many other areas of government activity which are equally important. Certainly I could argue that, in the health committee, there are a number of areas of government activity about which I am concerned which need more attention. However, I would not seek to do this by having them report twice a year. I think there are some real issues about that form of scrutiny anyway.

There are many other ways in which committees can look at what is going on. I am sure you will do that in the Planning and Environment Committee, in the various inquiries that you initiate. So you will have the opportunity, if you wish, to have ongoing scrutiny of how the authority is working through the general inquiry work that you carry out.

MS DUNDAS (9.29): I have listened to this debate with great interest. I am glad we are having this debate, because we need to discuss again the issues of transparency of this authority, and also the ability of MLAs to have access to the Planning and Land Authority.

I think there is still a little uncertainty about the level of access members of this Assembly will have to both the authority and the council, and whether they too will have the ability to receive independent information on planning issues from these bodies. I know that, through the round-table process and ongoing discussions, there are some amendments that go some steps forward to addressing these. To a certain extent, it is going to be a case of: "Let's see how it works." This amendment was one suggestion to help move things forward—by having the authority report to the Planning and Environment Committee. I have been thinking this over, and I do not believe that will necessarily help the situation.

I believe that, in a sense, the Planning and Land Authority will report twice in a calendar year anyway—through the estimates process and through the annual reports. Information on how the authority was going would then be accessible. I would not want to duplicate that process and have the Planning and Land Authority spending most of its time writing reports, as opposed to being out there planning, educating, consulting and building a city of which we can all be proud.

I take on a number of the issues raised by the community through the committee's inquiry into this bill, and concerns raised again here by Mrs Dunne. I believe we will need to watch how the Planning and Land Authority is travelling. If necessary, maybe the Planning and Environment Committee will step in but, again, I think it is a wait and see situation.

MR HARGREAVES (9.31): Mr Speaker, one of the things that strike me about this is that we have to be careful not to set a precedent. What the minister is saying is quite right, and I want to add a little to that.

What worries me is that standing committees have the power to call for papers and to call for people to come before them and address whatever issues the standing committees feel necessary. we must be very careful about the fact that, whilst statutory authorities are independent, they are responsible to the Assembly and to the minister who has carriage of the portfolio. They are not responsible, per se, to standing committees.

It seems to me that what this proposes is that, for the first time, we will make a statutory authority responsible to a standing committee. The standing committee has plenty of power as it is. The statutory authorities must put forward annual reports to the Assembly so that the standing committee, if it feels so inclined, can call not only the statutory authorities to come before them for a particular issue but also the minister. That often happens, and I have not yet seen a minister knock back an opportunity.

So, Mr Speaker, I believe we have to be very careful not to create a precedent where an agency or statutory authority has a direct responsibility to a standing committee of this Assembly. This Assembly is not about the day-to-day governance of the territory—that is the responsibility of ministers. We hold ministers accountable for that. In the instance of having them responsible to a standing committee, suppose the standing committee did not like it? What are they going to do—move a no confidence motion in the CEO? I do not think so—they are going to move a no-confidence motion in the minister. That is not on—in my view. We hold the minister responsible for whatever happens in government, so I do not think that is the right thing.

I understand what Mrs Dunne is trying to do, but I think enough powers exist already within the context of the Assembly and the standing committee to achieve what she wants.

MRS DUNNE (9.33): The arguments against this amendment boil down to: "We can't do it because we don't do it now." Frankly, Mr Speaker, that is not a satisfactory approach.

The minister talked about a new model of governance. It is a new model of governance so long as it is convenient for the minister. In response to this amendment, he said it is not reasonable to hold this authority above all others. Yes, it is creating a precedent for this jurisdiction. It is not unprecedented that statutory authorities report on a regular basis, in a statutory way, to an appropriate committee. This does not make the statutory authority answerable to the committee, as Mr Hargreaves says. After all, as Mr Hargreaves knows, as chairman of a committee, he is nothing more than a cipher for the Assembly. He is a conduit for the Assembly.

We could have them appearing at the bar of the Assembly, but that would be highly inconvenient and not a very effective way of doing things. We have here a minister saying that the current reporting arrangements are adequate. For a minister who wants a new model of governance, I do not think that adequate is good enough. Is that all you want—just to be adequate?

You are trying to create an organisation which, by your own devices and your own policy statements, before the election and since, is to be independent. Yet, when it comes to real independence, you baulk, because really you still want it to be a creature of the minister. That was reinforced by the words of Mr Hargreaves. This is still not an independent authority, it is a creature of the minister of the day. By this amendment, we are proposing to make it less a creature of the minister of the day and more accountable to the Assembly.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.35): I find it ironic, Mr Speaker, that the Liberal Party, which is opposed tooth and nail to the establishment of a statutory planning authority, now advocates its independence.

The reality is that the authority is independent. It is independent in relation to its regulatory functions and its functions in relation to the implementation of policy. It has been very clear from day one—indeed from the day the Labor Party released its planning policy—that the policy-making power, when it came to planning, did not rest with the authority, it rested with the government of the day and the Assembly of the day, as it should. Elected representatives must make the policy. I do not think anyone—not even Mrs Dunne in her heart of hearts—would argue the contrary.

The issue here is: are we providing anything more in relation to the capacity of, say, the Planning and Environment Committee to undertake these functions? The answer is that we are. At the moment, the Planning and Environment Committee can call officers of PALM as witnesses to give advice on planning issues the committee is considering. They do that very well.

Mr Speaker, those officers of PALM are ultimately giving advice on the specific policy issues that the government has already determined. So, essentially, the officers are there presenting the government's position. I believe this bill, through the establishment of the Planning and Land Authority, provides an opportunity for the committee to question a statutory authority on what advice has been given to the government on, say, a particular draft variation.

It is entirely possible that the authority will have given advice somewhat different from the advice ultimately implemented by the government. For the first time, committees in this place will have the opportunity to hear that and make their own judgments when considering a draft variation. They will not simply hear from the officers presenting the government's policy position. The authority will be independent, it will give independent advice to the government, the government will ultimately make the decision, implement the policy and direct the authority, effectively, to implement the policy. However, it will be entirely possible for this place, through its committees, to question the authority, test the result with the advice the authority gave, and make judgments. I think that leads to better-informed decision-making from the planning committee.

In my experience on the planning committee, it was a source of frustration that the committee could not seek expert advice from a government agency which was potentially contrary to the policy position as presented by the government in a draft variation. Well, that is exactly what the establishment of an independent planning authority can do—it can give you that option. It is a new model of governance—a new way of doing things. Maybe it is not exactly the way Mrs Dunne wants it—nevertheless, it is a new way of doing things. It is an opportunity for the authority to say, "This is the advice we gave the government, the government did not implement all of it—or did not accept it." You can then hold the government accountable and test the assumptions that underpin the draft variation as referred to the planning committee by the government.

I think that is a good process. It is a healthier process—a process that leads to more informed decision-making on issues such as draft variations. It is a new model of governance and I believe a significant step forward, based on what we currently have.

Proposed new clause 15A negatived.

Clause 16.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.40): I move amendment No 10 circulated in my name *[see schedule 6 at page 4192]*.

This amendment amends clause 16 (a) to refer to any direction that may be given to the Planning and Land Authority. It clarifies that the authority must report on any direction given to it under this act and under any other relevant acts of the territory.

MS DUNDAS (9.40): This is another amendment that came out of the round table process. It was put forward by the Democrats to bring about greater transparency. The current bill limits the disclosure of directions in the annual report to directions under section 11. This amendment will require all the directions by the minister or the executive to be recorded in the annual report. This includes any directions under the Land (Planning and Environment) Act 1991 as well as those contained within this bill. This amendment will also cover directions by the Treasurer that are proposed as part of this bill.

It is important that we clarify what information is to be in the annual report and have available all of the directions given so that we increase the transparency of the government's interaction with this new so-called independent Planning and Land Authority. I hope the Assembly supports this amendment.

Amendment agreed to.

Clause 16, as amended, agreed to.

Clause 17 agreed to.

Clause 18.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.42): I move amendment No 11 circulated in my name *[see schedule 6 at page 4192]*.

Amendment No 11 inserts a new clause 18 (1A), providing that the person appointed to the position of chief planning executive should have the management and planning experience or expertise necessary to exercise the functions of the position of the chief planning executive.

This amendment again arose out of the round table discussions. It was clear that members wanted clarification of the sorts of qualifications and experience that a chief planning executive should have. Whilst the original proposal mooted was that town planning should be included as a formal qualification, the government believes that this amendment better addresses the situation in ensuring that the person has the necessary management and planning experience to undertake the role.

Some of the most significant planners in this city have not had formal town planning qualifications. Sir John Overall, the first commissioner of the NCDC, had no formal town planning qualification, yet I doubt whether anyone would doubt his capacity as an effective chief planner for the city.

This new provision states that they must have appropriate management and planning experience or expertise to exercise the function of the chief planning executive. It clarifies that you need to have someone of significant standing professionally to undertake the role of chief planning executive. That is an appropriate change to the clause.

MS TUCKER (9.44): I will be supporting this amendment. It is one of the suggestions we made at the round table. It is very important that we move away from the managerialism that often results in no relevant expertise apart from apparent management skills. This is a good step.

MS DUNDAS (9.45): I will be supporting this amendment. As the chief planning executive is the Planning and Land Authority, the successful executive candidate must not only have a high standard of qualifications but also be able to maintain the confidence of the community in carrying out the functions of the authority.

Our chief planning executive will be central in developing a long-term vision for the future of Canberra's planning system and will need to be not just a good public servant but also a community leader capable of communicating with the people of Canberra and capable of addressing their concerns.

The government will be able to keep these expanded qualifications in mind when they are searching for the best chief planning executive. The successful implementation of this bill and the effectiveness of the Planning and Land Authority will result from the direction of the chief planning executive. We support this amendment and hope that this broadened definition will lead to the appointment of a good chief planning executive.

MRS DUNNE (9.46): The Liberal opposition will also be supporting this amendment. As previous speakers have indicated, it goes some way to ensuring that the person who takes on this very onerous task is appropriately qualified not just materially and formally but in a broad range of expertise. This is consistent with the recommendation of the Planning and Environment Committee report and takes up the recommendations of many of the interest groups.

It is the view of the Liberal opposition that the search for the chief planning executive should be a wide one. It should canvass international candidates, because it is our view that the calibre of the chief planning executive will go most of the way to determining the calibre and the effectiveness of the Planning and Land Authority.

If we are to go down this path and deliver what the government says it will deliver in the fast turnaround of development applications, fewer disputes, more mediation and fewer costs to people, we have to have a chief planning executive of the highest calibre who will lead this organisation into a new era. Without that, very little will change.

Amendment agreed to.

Clause 18, as amended, agreed to.

Clauses 19 and 20, by leave, taken together and agreed to.

Clause 21.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.48): Mr Speaker, I seek leave to move amendments Nos 12 and 13 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 12 and 13 *[see schedule 6 at page 4192]*.

These amendments are relatively straightforward. They amend from seven to six the number of sitting days within which the Assembly may resolve to require the executive to end the appointment of the chief planning executive and amend from seven to six sitting days the period after which the chief planning executive's suspension ends if the Assembly has not resolved to require the executive to end the chief planning executive's appointment.

In essence, the matter can be resolved within a standard sitting fortnight rather than a sitting fortnight plus one extra sitting day, which is logistically quite difficult. It is really an issue of harmonising sitting periods within a reasonable timeframe.

Amendments agreed to.

Clause 21, as amended, agreed to.

Clauses 22 and 23, by leave, taken together and agreed to.

Clauses 24 to 36, by leave, taken together.

MRS DUNNE (9.50): The Liberal opposition will be opposing clauses 24 to 36. These clauses encompass chapter 3 of the Planning and Land Bill, which deals with the Planning and Land Council. The Planning and Land Council is a new advisory body established by this bill. The legislation suggests its role is to give advice to the agency and the Minister for Planning when they ask for it and to the agency when it exercises particular types of functions.

These functions include giving advice on draft variations to the Territory Plan, preparation and review of the strategic and spatial plan for Canberra, master planning, the annual urban development program, preparation and review of the land release program, applications to remove the concessional status of leases, DAs requiring an environmental impact assessment, and multiunit residential developments.

These are matters that are still subject to regulation. As you might know, Mr Speaker, I have been most vocal in my criticism of the government for its failure to provide regulations. We have a piece of paper that says, "These are the sorts of things that might be covered by regulation." At this stage we can only take the minister's word for it. But there may be things apart from multiunit residential developments of three storeys or more than 50 units, developments in excess of 7,000 square metres, buildings higher than 28 metres—matters that raise a significant issue of policy or considerable community concern.

The devil is in the detail. We do not know what this council is going to do. There is nothing that says what its advice may consist of. All we know is that they may give advice, but no agency or organisation has to comply with that advice. The whole problem with this arrangement is that the involvement of the council will delay and slow down the development process.

When a developer or someone proposing a development application goes to the council is unclear. When I sought advice on this matter in the committee, it was told it could be in the pre-application phase, but that means that the pre-application phase would take much longer than it currently does, or it could be in the development once a development application is made. Then there are questions as to whether the statutory time limits in a development application can be met.

It is laudable in many ways to provide advice to people in the development process and to attempt to open this process to community input, but there is not sufficient community input to warrant the delay, the cost or the slowdown which goes counter to all the things the minister says that the Planning and Land Authority will be able to deliver for the people of Canberra.

This is a means of throwing out a sheet anchor on the great boat of planning enterprise ACT. Every time somebody wants to do something of major import, it will have to go to the Planning and Land Council to seek its advice at some stage in the application phase. It does not quite matter when. It does not matter whether it is in the pre-application phase or in the DA phase. It is still a delay. It is still a cost to the community in time, resources and energy. It is an enervating process that will not bring about substantial change.

The question I have asked over and over again, and will continue to ask, is: if we make this change, what will change for the better? I put it on the record that there will be no change for the better because of this. It will just mean delay. For this reason the Liberal opposition opposes chapter 3 and the creation of the Planning and Land Council.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (9.55): Mrs Dunne needs to clarify where her opposition sits. Is her opposition to the notion of having an advisory council, or is her opposition to the notion that the processes in which the Planning and Land Council operate are unclear? We seem to have a mix of arguments. Is she saying that she objects to the notion of an expert advisory body giving advice to either the authority or the minister on particular matters? If she is, I find that extraordinary.

I find even more extraordinary Mrs Dunne's assertion that there is no requirement that the minister or the authority must agree with the advice of the Planning and Land Council. I know of no other situation where a decision-maker must agree with an advisory body. This is at the root of the confusion in Mrs Dunne's opposition to this chapter in the bill.

The Planning and Land Council is an advisory body; it is not the decision-maker. The minister or the authority, depending on the matter, is the decision-maker. For that reason advice must be taken account of but not necessarily agreed with. We have a heap of ministerial advisory councils. I never heard the previous Liberal government say you must take their advice. The whole point is that they are there to give their opinion. They are experts or stakeholders that represent the views in a particular sector. Their views should be taken into account, but they should not necessarily be agreed with.

It is the government's view that the Planning and Land Council is a significant improvement on the existing process. It will be an expert body. The fields of expertise outlined in the bill are numerous. The council is to provide advice on issues of concern.

Mrs Dunne says that we have no say on the matters that the council gives advice on. That is wrong. The regulations which set out the matters the council will give advice on are disallowable. You have seen what the government's intention is, Mrs Dunne. If you do not like it, disallow it. That is the option open to this Assembly. To say, "I do not like it, because I have not seen it and therefore I want to get rid of the whole structure" does not make sense. In fact, it is a nonsense.

There is a real role for the Planning and Land Council. For instance, at the moment, if I as minister am asked to exercise my call-in power, I need to consult no-one and I need to seek advice from nobody. I can just do it.

Mrs Dunne: That is the exercise of political power. Get used to it.

MR CORBELL: I have no problem with the exercise of political power. But the process would be greatly improved if there was a obligation on the minister, in considering exercising the call-in power, to seek the expert advice of the Planning and Land Council. It does not mean the minister has to agree with that advice, but it means the minister should take that advice into account. That strengthens the quality of decision-making. That is just one example of the role of the Planning and Land Council.

Another role is to give expert advice on policy on the development of draft variations to the Territory Plan. If people are concerned about not having sufficient check on the activities of the statutory authority, here is their opportunity. The Planning and Land Council adds another element of advice to the decision-making process. Its advice will be made public, so everyone will know what its views are. This will better inform the planning debate.

Mrs Dunne has not made out her argument and is intent on tearing down the whole structure because she disagrees with the detail.

I seek leave to move amendments Nos 14 and 15 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments 14 and 15 *[see schedule 6 at page 4192]*.

Amendment 14 amends clause 27 (1) to substitute a new note 2 clarifying that the appointment of a member of the Planning and Land Council is disallowable. Amendment 15, to clause 27 (2), adds engineering as an area of expertise relevant to the appointment of members of the Planning and Land Council.

MS TUCKER (10.01): Chapter 3 is a very important part of the bill and should not be removed. Hopefully, it will ensure the authority gets important advice from a wide range of experts and stakeholders. It is a critical part of the planning structure the Labor government has come up with. I would be very concerned if it were not there.

MS DUNDAS (10.02): A number of concerns have arisen around the operation of the Planning and Land Council. Specifically, a number of groups have argued that they should have representation. This is why I believe the minister has moved an amendment to include engineering as an area of expertise that should be represented among the membership of the council.

The relationship between the council, the minister and the authority is still uncertain. It is unclear what access members of the Assembly will have to the council. So in some ways and in some areas I share Mrs Dunne's concern about the council. However, I do not

agree that we should throw the baby out with the bathwater and get rid of the council altogether.

I recognise that the council is a novel idea and is unlike any other statutory body or committee in other legislation. I also recognise that a truly independent expert body may have some useful input into Canberra's planning process. The operation of the council will need to be closely reviewed, along with the rest of the act, in a few years, with close attention to its relationship with other bodies and whether the advice it provides covers all disciplines we believe should be represented on such a body.

Amendments agreed to.

Debate (on motion by **Ms Gallagher**) adjourned to the next sitting.

Adjournment

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

> That the Assembly do now adjourn.

The Assembly adjourned at 10.04 pm.

Schedules of amendments

Schedule 1

Health and Community Care Services (Repeal And Consequential Amendments) Bill 2002

Amendments circulated by Minister for Health

1
Clause 2
Page 2, line 4—
omit clause 2, substitute
2 Commencement
This Act commences at 5 pm on 31 December 2002.
Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Schedule 2

Statute Law Amendment Bill 2002 (No 2)

Amendments circulated by the Attorney-General

1
Clause 2 (2)
Page 2, line 7—
omit clause 2 (2), substitute
(2) However, the following parts commence on 31 December 2002:
- part 3.11 (*Lakes Act 1976*)
- part 3.14 (*Poisons Act 1933*)
- part 3.15 (*Poisons and Drugs Act 1978*)
- part 3.17 (*Public Health Act 1997*).

(2A) Also, a date or time provided by or under a special commencement provision for an amendment or repeal made by this Act has effect, or is taken to have had effect, as the commencement date or time of the amendment or repeal.

2
Schedule 3, part 3.1
Page 34, line 3—
omit part 3.1

Schedule 3

Criminal Code 2002

Amendments circulated by the Attorney-General

1
Clause 2
Page 2, line 4—
omit clause 2, substitute
2 Commencement
(1) This Act (other than schedule 1, part 1.21A) commences on 1 January 2003.
(2) Schedule 1, part 1.21A commences on the commencement of the *Territory Records Act 2002*, section 52.
Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3
Clause 8 (1)
Page 4, line 14—
omit
offences created before 1 January 2003
substitute
an offence created by a provision that commenced before 1 January 2003 (a ***pre-2003 offence***)

3
Clause 8 (2)
Page 4, line 16—
omit clause 8 (2), substitute
(2) To remove any doubt, if—
(a) a provision containing a pre-2003 offence is omitted and remade (with or without changes) before the default application date; and
(b) the remade provision creates an offence;
the provisions of this chapter apply to the offence (unless an Act or subordinate law provides otherwise).

4
Clause 23 (1)
Page 11, line 7—
omit
an offence of strict liability
substitute
a strict liability offence

5
Clause 24 (1)
Page 11, line 21—
omit
an offence of absolute liability
substitute
an absolute liability offence

6
Clause 33 (2)
Page 17, line 8—
omit clause 33 (2), substitute
(2) However, if—
(a) each physical element of an offence has a fault element of basic intent; and
(b) any part of a defence is based on actual knowledge or belief;
evidence of self-induced intoxication cannot be considered in deciding whether the knowledge or belief exists.

7
Clause 42 (3) (a)
Page 21, line 23—
omit
really serious injury
substitute
serious harm

8
Clause 58 (3), proposed new examples
Page 34, line 5—
insert
Examples
1 The *XYZ Act 2002*, section 10 (1) creates an offence of producing a false or misleading document. Section 10 (2) provides—
(2) This section does not apply if the document is not false or misleading in a material particular.
Section 10 (2) is an exception to section 10 (1). A defendant who wishes to rely on the exception has an evidential burden that the document is not false or misleading in a material particular.
2 The *XYZ Act 2002*, section 10 (1) creates an offence of a person making a statement knowing that it omits something without which the statement is misleading. Section 10 (2) provides—
(2) This section does not apply if the omission does not make the statement misleading in a material particular.
Section 10 (2) is an exception to section 10 (1). A defendant who wishes to rely on the exception has an evidential burden that the omission did not make the statement misleading in a material particular.

3 The *XYZ Act 2002*, section 10 (1) creates an offence of disclosing certain information about a restraining order. Section 10 (2) provides—
(2) This section does not apply if the disclosure is made to a police officer.
Section 10 (2) is an exception to section 10 (1). A defendant who wishes to rely on the exception has an evidential burden that the disclosure was made to a police officer.
Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

9
Clause 59, proposed new example
Page 34, line 25—
insert
Example for par (b)
The *XYZ Act 2002*, section 10 (1) creates an offence of exhibiting a film classified 'R' to a child. Section 10 (2) provides—
(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant believed on reasonable grounds that the child was an adult.
Section 10 (2) provides a defence to an offence against section 10 (1). A defendant who wishes to rely on the defence has a legal burden of proving that the defendant believed on reasonable grounds that the child was an adult.
Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

10
Clause 106 (3)
Page 44, line 21—
omit clause 106 (3)

11
Schedule 1
Proposed new amendment 1.7A
Page 62, line 2—
insert
[1.7A] Section 3
omit

12
Schedule 1
Proposed new amendment 1.21A
Page 65, line 2—
insert
[1.21A] Section 161 (3) (e)
substitute
(e) if the period of imprisonment is longer than 5 years but not longer than 10 years—1 000 penalty units; and
(f) if the period of imprisonment is longer than 10 years—1 500 penalty units.

13
Schedule 1
Proposed new part 1.13A
Page 66, line 13—
insert
Part 1.13A Prostitution Act 1992
[1.26A] Section 6 (1) (a), note
substitute
Note A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).
[1.26B] Section 6 (1) (c)
omit
the *Crimes Act 1900*, part 9
substitute
the Criminal Code, part 2.4 (Extensions of criminal responsibility) or the *Crimes Act 1900*, section 181 (Accessory after the fact)
[1.26C] Section 6 (1) (e)
omit
the *Crimes Act 1900*, part 9
substitute
the Criminal Code, part 2.4 (Extensions of criminal responsibility) or the *Crimes Act 1900*, section 181 (Accessory after the fact)

14
Schedule 1
Proposed new part 1.21A
Page 71, line 24—
insert
Part 1.21A Territory Records Act 2002
[1.41A] New section 5A
insert
5A Offences against Act—application of Criminal Code etc
Other legislation applies in relation to offences against this Act.
Note 1 Criminal Code
The Criminal Code, ch 2 applies to the offences against this Act.
The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).
Note 2 Penalty units
The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.
[1.41B] Section 52 (2)
substitute
(2) A person to whom this section applies commits an offence if the person—
(a) makes a record of protected information; or
(b) directly or indirectly, discloses or communicates to a person protected information about someone else.
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2A) Subsection (2) does not apply if the record is made, or the information is disclosed or communicated—

(a) under this or any other Act; or

(b) in relation to the exercise of a function, as a person to whom this section applies, under this or any other Act.

[1.41C] Section 52

renumber subsections when Act next republished under Legislation Act 2001

15

Schedule 1

Amendment 1.51

Page 74, line 8—

omit amendment 1.51, substitute

[1.51] Section 161 (2), note

substitute

Note Under the Criminal Code, pt 2.4, it is an offence to attempt to commit an offence, to aid, abet or incite a person to commit an offence or to conspire with a person to commit an offence. Also, under the *Crimes Act 1900*, s 181 it is an offence to receive or assist a person knowing they have committed an offence. Those provisions apply to an offence against this section.

16

Dictionary, proposed new definition of *harm*

Page 76, line 17—

insert

harm means—

(a) physical harm to a person, including unconsciousness, pain, disfigurement, infection with a disease and any physical contact with the person that a person might reasonably object to in the circumstances (whether or not the person was aware of it at the time); and

(b) harm to a person's mental health, including psychological harm, but not including mere ordinary emotional reactions (for example, distress, grief, fear or anger);

whether temporary or permanent, but does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

17

Dictionary, proposed new definition of *serious harm*

Page 77, line 13—

insert

serious harm means any harm (including the cumulative effect of more than 1 harm) that—

(a) endangers, or is likely to endanger, human life; or

(b) is, or is likely to be, significant and longstanding.

Schedule 4

Criminal Code 2002

Amendments circulated by Mr Stefaniak

1
Subclause 28 (1), page 14, line 12 –
omit paragraph (c)

2
Subclause 42 (3), page 21, line 22
omit paragraph (a)

Schedule 5

Criminal Code 2002

Amendments circulated by Ms Tucker

1
Proposed new clause 123 (2)
Page 57, line 19—
insert
(2) To remove any doubt, a person does not commit an offence against this section only because the person takes part in a protest, strike or lockout.

2
Proposed new clause 124 (1A)
Page 58, line 5—
insert
(1A)To remove any doubt, a person does not commit an offence against this section only because the person intends to or threatens to take part in a protest, strike or lockout.

Schedule 6

Planning and Land Bill 2002

Amendments circulated by the Minister for Planning

1
Clause 2
Page 2, line 4—
omit clause 2, substitute
2 Commencement
This Act commences on 1 July 2003.
Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

2
Proposed new clause 4A
Page 3, line 4—
insert
4A Offences against Act—application of Criminal Code etc
Other legislation applies in relation to offences against this Act.
Note 1 Criminal Code
The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).
The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).
Note 2 Penalty units
The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

3
Clause 8 (1) (g), proposed new note
Page 5, line 13—
insert
Note Under the *Land (Planning and Environment) Act 1991*, s 160B, the planning and land authority is authorised to grant, on behalf of the Executive, leases the Executive may grant on behalf of the Commonwealth.

4
Clause 8 (1) (n)
Page 5, line 25—
omit clause 8 (1) (n), substitute
(n) to provide administrative support and facilities for the council;
(o) to ensure community consultation and participation in planning decisions;
(p) to promote public education and understanding of the planning process, including by providing easily accessible public information and documentation on planning and land use.

5
Clause 8 (3)
Page 6, line 6—
omit clause 8 (3), substitute

(3) The authority must exercise its functions—

(a) in a way that has regard to sustainable development; and

(b) taking into consideration the statement of planning intent.

Note For the meaning of ***sustainable development***, see s 73. The statement of planning intent is dealt with in s 13.

6
Clause 9
Page 6, line 11—
omit clause 9, substitute

9 Authority to comply with directions

The authority must comply with any directions given to the authority under this Act or another Territory law.

Note The authority may be given directions by the Minister under s 11.

7
Clause 11 (3) and (4)
Page 7, line 12—
omit clause 11 (3) and (4), substitute

(3) The Minister must—

(a) present a copy of a direction to the Legislative Assembly within 6 sitting days after the day it is given to the authority; and

(b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day it is given to the authority—give a copy of the direction to the members of the Legislative Assembly within the 14 days.

(4) If subsection (3) is not complied with, the direction is taken to have been revoked at the end of the period within which the copy of the direction should have been presented or given to members.

(5) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

8
Clause 13 (2)
Page 8, line 8—
omit clause 13 (2), substitute

(2) The Minister must—

(a) present a copy of the statement of planning intent to the Legislative Assembly within 6 sitting days after the day it is given to the authority; and

(b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day it is given to the authority—give a copy of the statement to members of the Legislative Assembly within the 14 days.

9
Proposed new clause 13 (3)
Page 8, line 10—
insert

(3) To remove any doubt, the statement of planning intent does not authorise a person to whom the *Land (Planning and Environment Act 1991*, section 8 (Effect of plan) applies to do anything inconsistent with the plan.

Example

The statement of planning intent may include policy material inconsistent with the Territory plan, but the plan would have to be amended before the policy could be implemented.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

10
Clause 16 (a)
Page 8, line 27—
omit clause 16 (a), substitute

(a) a copy of any direction given to the authority under this Act or another Territory law; and

11
Proposed new clause 18 (1A)
Page 10, line 9—
insert

(1A) However, the Executive must not appoint a person under subsection (1) unless satisfied that the person has the management and planning experience or expertise to exercise the functions of the chief planning executive.

12
Clause 21 (3)
Page 11, line 14—
omit
7 sitting days
substitute
6 sitting days

13
Clause 21 (4) (b)
Page 11, line 22—
omit clause 21 (4) (b), substitute

(b) if the Assembly does not pass a resolution mentioned in subsection (3) within the 6 sitting days—at the end of the 6th sitting day.

14
Clause 27 (1), note 2
Page 15, line 6—
omit note 2, substitute
Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3). The appointment of someone other than a public servant for more than 6 months under this section would require consultation and be disallowable (see Legislation Act, s 227).

15
Clause 27 (2) (i)
Page 15, line 21—
omit clause 27 (2) (i), substitute
(i) public administration;
(j) engineering.

16
Clause 28 (b)
Page 16, line 4—
before
physical
insert
for

17
Proposed new clause 34 (3)
Page 18, line 4—
insert
(3) The council must publish the minutes of its proceedings within 7 days after the day the minutes are confirmed by the council.
Example
the council may put the minutes of its proceedings on a website
Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

18
Clause 36 (1)
Page 19, line 2—
omit
10 days
substitute
14 days

19
Clause 38 (4) (a)
Page 21, line 2—
omit clause 38 (4) (a), substitute

(a) in accordance with the objectives of the Territory plan; and

20
Clause 38 (4) (b)
Page 21, line 4—
omit

21
Clause 40 (3)
Page 22, line 1—
omit clause 40 (3), substitute

(3) If the land agency does something mentioned in subsection (1), the land agency must tell the Minister about doing the thing within 14 days after the day the agency does it.

22
Clause 40 (4) (b)
Page 22, line 6—
omit clause 40 (4) (b), substitute

(b) present the statement to the Legislative Assembly within 6 sitting days after the day the Minister is told about the act; and

(c) if the statement would not be presented to the Legislative Assembly under paragraph (b) within 14 days after the day the Minister is told about the act—give the statement to members of the Legislative Assembly within the 14 days.

23
Clause 41 (3)
Page 22, line 24—
omit clause 41 (3), substitute

(3) If the land agency enters into an agreement for a joint venture or trust, the land agency must tell the Minister about the agreement within 14 days after entering into the agreement.

24
Clause 41 (4) (b)
Page 23, line 4—
omit clause 41 (4) (b), substitute

(b) present the statement to the Legislative Assembly within 6 sitting days after the day the Minister is told about the agreement; and

(c) if the statement would not be presented to the Legislative Assembly under paragraph (b) within 14 days after the day the Minister is told about the agreement—give the statement to members of the Legislative Assembly within the 14 days.

25
Proposed new clause 44 (1A)
Page 25, line 8—
insert
(1A) The land agency must prepare a business plan for each financial year.

26
Clause 45 (2)
Page 26, line 6—
omit clause 45 (2), substitute
(2) If the Minister accepts a business plan, the Minister must—
(a) present a copy of the business plan to the Legislative Assembly within 6 sitting days after the day of acceptance; and
(b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day of acceptance—give a copy of the business plan to members of the Legislative Assembly within the 14 days.

27
Clause 50 (2)
Page 27, line 19—
omit
promptly

28
Proposed new clause 50 (2A)
Page 28, line 3—
insert
(2A) The land agency must tell the Minister under subsection (2) about a development within 14 days after the day the agency becomes aware of the existence of the development.

29
Clause 58 (2) (e)
Page 32, line 19—
omit clause 58 (2) (e), substitute
(e) public administration;
(f) engineering.

30
Clause 60 (b)
Page 33, line 5—
before
physical
insert
for

31
Clause 68 (1)
Page 36, line 14—
omit
10 days
substitute
14 days

32
Clause 74
Page 40, line 22—
omit clause 74, substitute
74 Abuse of position
(1) An official commits an offence if—
(a) the official—
(i) exercises an influence that the official has because of the official's position; or
(ii) engages in conduct in the exercise of a function that the official has because of the official's position; or
(iii) uses information gained because of the official's position; and
(b) the official does so with the intention of—
(i) dishonestly obtaining a benefit for the official or someone else; or
(ii) dishonestly causing a detriment to someone else.
Maximum penalty: imprisonment for 5 years.
(2) A person commits an offence if—
(a) the person has stopped being an official; and
(b) the person uses information that the person obtained because of the person's position as an official; and
(c) the person does so with the intention of—
(i) dishonestly obtaining a benefit for the person or someone else; or
(ii) dishonestly causing a detriment to someone else.
Maximum penalty: imprisonment for 5 years.
(3) In this section:
dishonestly—a person acts dishonestly if—
(a) the person's conduct is dishonest according to the standards of ordinary people; and
(b) the person knows that the conduct is dishonest according to those standards.
official means—
(a) the chief planning executive; or
(b) a council member; or
(c) a land agency board member.
position, in relation to an official, means the position held by the official under this Act.

33
Clause 75 (1)
Page 41, line 15—
omit clause 75 (1), substitute
(1) The Minister must begin a review of the operation and effectiveness of this Act not later than 31 December 2006.

Schedule 7

Planning and Land Bill 2002

Amendments circulated by Mrs Dunne

1
Clause 8 (1) (e)
Page 5, line 10—
omit

2
Clause 8 (1) (f)
Page 5, line 11—
omit

3
Clause 8 (1) (j)
Page 5, line 16—
omit

4
Clause 8 (1) (n)
Page 5, line 25—
omit

5
Clause 11 (3) and (4)
Page 7, line 12—
omit clause 11 (3) and (4), substitute

(3) The Minister must—

(a) present a copy of a direction, the proposed direction given to the authority under subsection (2) (a), and any comment on the proposed direction, (the ***relevant material***) to the Legislative Assembly within 6 sitting days after the day the direction is given to the authority; and

(b) if the relevant material would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day the direction is given to the authority—give the relevant material to the members of the Legislative Assembly within the 14 days.

(4) If subsection (3) is not complied with, the direction is taken to have been revoked at the end of the period within which the relevant material should have been presented or given to members.

(5) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

6
Clause 13
Page 8, line 4—
[oppose the clause]

7
Proposed new clause 15A
Page 8, line 21—
insert
15A Authority to report to relevant committee
(1) The authority must give the relevant committee of the Legislative Assembly a report on the activities of the authority at least once in every 6-month period.
(2) In this section:
relevant committee—see section 36 (4).

8
Chapter 3
Page 13, line 1—
omit

9
Chapter 4
Page 20, line 1—
omit

10
Clause 38 (4) (c)
Page 21, line 5—
omit clause 38 (4) (c), substitute
(c) in accordance with the latest business plan accepted by the Minister.

11
Proposed new clause 44 (1A)
Page 25, line 8—
insert
(1A) Before the beginning of each financial year, the land agency must prepare a business plan for the year and give it to the Minister.

12
Proposed new clause 47 (4) and (5)
Page 27, line 4—
insert
(4) The Treasurer must—
(a) present a copy of a direction under subsection (1) to the Legislative Assembly within 6 sitting days after the day it is given to the authority; and
(b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day it is given to the authority—give a copy of the direction to the members of the Legislative Assembly within the 14 days.
(4) If subsection (3) is not complied with, the direction is taken to have been revoked at the end of the period within which the copy of the direction should have been presented or given to members.

13
Proposed new clause 50A
Page 28, line 6—
insert
50A Land agency to report to relevant committee
(1) The land agency must give the relevant committee of the Legislative Assembly a report on the activities of the agency at least once in every 6-month period.
(2) In this section:
relevant committee—see section 36 (4).

14
Clause 75 (1)
Page 41, line 16—
omit
2007
substitute
2005