DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

4 March 2003

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Tuesday, 4 March 2003

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.

Public Accounts—Standing Committee
Report No 4

MR SMYTH (Leader of the Opposition) (10.32): Pursuant to order, I present Report No 4 of the Standing Committee on Public Accounts entitled Appropriations Bill 2002-2003 (No 2) together with extracts of the relevant minutes of proceedings. I seek leave to move a motion authorising the report for publication.

Leave granted.

MR SMYTH: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

MR SMYTH: I move:

> That the report be noted.

Mr Speaker, as promised in the last sitting week, the Public Accounts Committee has looked at the Appropriation Bill No 2 for this financial year. The report will be tabled this morning and follows the deliberation of members. There are three simple recommendations which go with the report. The first is that the bill be passed; the second looks at the nature of risk management; and the third talks about accountability processes so that members of the Assembly, and therefore the public, can be kept up-to-date with the expenditure that will come from the recent bushfire tragedy.

During proceedings, a number of issues came up. I would like to briefly address a couple of those issues. The first is the issue of risk management. I feel that risk management is very important. It is something all good businesses take into account in this modern day and age. The recommendation that the government brings forward a statement on the risk management strategies, adopted in agencies such as the ESB and the hospital, to deal with major emergencies is as a result of what we thought was a somewhat casual attitude of the government towards the nature of risk management—and indeed the government's attitude.

Mr Speaker, I draw to the attention of the Assembly that one of the objectives of the ACT Insurance Authority, set out in section 9(e), under its functions, is to promote good risk management practices. We in the Assembly have recognised that risk management is an important issue. It is therefore appropriate that the executive take it as a serious issue as well.

From my perspective, some of the opening exchanges in the meeting of the PAC were not acceptable, but we have not put these things into the report. The report is simply a straight baton the bill. The Treasurer made comments about some of the questions being, I think, anally repetitive. The nature of budgets is that they can tend to be very repetitive—so I don't shy away from asking those questions.

The committee asked about alternative sources for funding of departmental priorities. In particular, the head of Chief Minister’s Department was asked what—if he did not receive the appropriation—would have to be foregone. His reply was that that would be a matter for government. He invited the PAC committee to review the program allocations and pick for itself which programs were not to be proceeded with. He said that it is as simple as that.

I do not think that that is appropriate. It was a reasonable question. If there was not additional expenditure available, what would have had to be changed? One of the priorities of budgeting is that sometimes you look at what needs to be cut. In particular, as the government has said, programs such as the prison might have to disappear. Mr Speaker, it is very important that questions posed by the committee are taken seriously.

The third area I would like to speak to is the McLeod inquiry. The McLeod inquiry has picked up $400,000 for the conduct of that inquiry. Yet, when the committee asked questions about how that number had been derived and whether Mr McLeod had been asked for his opinion, the answer was no—that they had not spoken to Mr McLeod. It seems unfortunate that that has happened, because I do not think anybody would like to see such an inquiry underfunded.

It is interesting that, later that day, a spokeswoman for the Chief Minister said that Mr McLeod would review all submissions and refer those raising potentially insensitive issues to the head of Chief Minister’s Department—so there was obviously some correspondence going on. It is interesting that, with regard to the PAC, there was no communication with Mr McLeod on how the inquiry would be conducted—and that was why he had not had any input into the value of moneys put aside for it—yet clearly the Chief Minister’s office was, at that stage, talking to Mr McLeod.

The final point is about the total cost of the bushfires. As the Treasurer has rightly said, the financial consequences of the bushfire disaster may take up to three years to be finally resolved. We think it is important, certainly in the short term—so for the next five quarters—that the accounting be made public. Therefore, one of the recommendations is that, perhaps in the financial statements for the next five quarters, as a discrete item, the expenditure relating to the bushfires and the position as it emerges be included for the information of all.

Mr Speaker, I would like to thank my colleagues on the committee—Ms Tucker and Ms MacDonald—for their work, especially coming in this morning to make sure the report was ready for tabling. I particularly acknowledge the work of Derek Abbot, the secretary to the committee. He had very tight timeframes to work to and has done fabulously well in putting the report together for tabling this morning.

MS TUCKER (10.39): I will make a few brief comments on this report. The committee obviously recommends that this bill be passed. This is an important appropriation to deal with the fires. It was good process, though, to have the opportunity to talk to the minister and officials about the details of the appropriation.

The few points I would like to make are related to the question of Planning and Land Management. There was a discussion in the hearing regarding how smooth the process was for people who want to rebuild—whether the process would be less or more smooth, depending on whether you chose to rebuild in exactly the same way.

We have commented on this in the report, but I want to make it clear that I have received concerns from some members of the community, particularly one architect who found difficulty with the process facilitated for rebuilding which involves some change to the house. The changes would not have seriously altered the footprint of the development, but would have made the house much more energy efficient. That meant that the process was quite slow.

There seemed to be a problem between what was being said at the recovery centre and the assistance provided there and what was happening in PALM. There is, in this appropriation, money to enable PALM to speed up its processes, and a commitment from the Treasurer and the government to ensure that, if people want to make their houses more energy efficient, if there is not a major change to the footprint, they will not be held up by bureaucratic processes.

I want to alert the minister to that most important issue. It is most important that this is dealt with. We all want to see this disaster taken as an opportunity by people who want to do that, and this is an example of how it can happen.

The committee also made comment about how well emergency services, especially the hospitals, are planning to deal with such events—emergencies—and we have made a comment on that in the report. I understand the McLeod inquiry, and probably the coronial inquiry as well, will potentially assist in how government and the various departments, such as the hospitals, manage these sorts of situations in the future.

At the moment, the committee has asked for a statement, but I understand that further work will occur now, through the McLeod inquiry and the coronial process, which may change or inform the government's response to such events. Hopefully, there will not be any similar events, but, if there are, we may be better prepared, because we can learn lessons from this disaster.

I want to speak briefly on environmental restoration. The point is made in this report that, while there is money put aside for rehabilitation in the areas that are in the parks—and there is serious work to be done there—there is also environmental damage resulting from the roads around Canberra being bulldozed. I have seen one of those roads, which basically caved in after the first rain. That is not necessarily going to be covered by the funding in this appropriation. I raised that and was given an assurance—I think from Mr Thompson—that they would look at that environmental issue in the urban area as

well, but I am not sure how it is going to be funded. I would not like to see that having to come out of the existing funds of Environment ACT or Urban Services. I am interested in hearing the government's response on that.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism and Minister for Sport, Racing and Gaming) (10.44): I thank the committee for the work they have done—it was a lot of work in a very short space of time. On face value, they are to be congratulated on the report. Obviously, the government will do its level best to adopt the recommendations put forward.

In relation to the recommendation for separate accounting over the next five quarters, that may not be as simple as it looks. I will certainly discuss it with Treasury, but where do you draw the line between what people are doing work-wise and whether it is possible to effectively set up parallel accounting for street maintenance versus street restoration? We will have to work that through, but we will certainly try to let the Assembly know what the costs are. It is important for us to know what the costs are—especially those costs that would qualify for national disaster recovery arrangements. Therefore we will be doing our level best to make sure we can provide that information.

Usually, at this time, after a disaster of such magnitude as this, one might look at risk management strategies and the performance of the strategies that were in place. I must confess I had no idea that an event of this magnitude would occur. I had no idea that the wall of flame of which I have seen photographs could be created. It was a phenomenal event that brings a whole new perspective.

In my office, we received some photographs of the wall of flame heading for Kambah. The houses take up about one-eighth of the frame, whilst the wall of fire takes up about two-thirds. It is a horrific sight. Like everybody else, I retain a concern that 20-20 hindsight may unearth a whole lot of things that might have been thought of, but which probably would never have been thought of by anybody at the time. The imagination, or concept of what might happen, occurs to the mind only after the event. Anyway, I trust that everybody will go into the inquiry, and re-examination phase, with an open mind.

Regarding Ms Tucker's point on Planning and Land Management, the government's attitude is that we want to facilitate the restoration of homes as soon as possible. We want people to be in a situation where at least the physical scale of this disaster is behind them. That there will always be a margin somewhere in how much people want to change—the point where is it the restoration of an existing home, with some modern enhancements, and where is it a change—so a little tolerance, please. However, be assured that the attitude is to try to make sure that everybody can be put back into at least the physical environment they enjoyed before the fire occurred. I thank the committee.

Question resolved in the affirmative.

Legal Affairs—Standing Committee
Scrutiny report No 26

MR STEFANIAK (10.49): I present the following report:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report No. 26, dated 27 February 2003, together with the relevant minutes of proceedings and the confirmed minutes relating to report number 25.

I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Scrutiny Report 26 contains the committee's comments on three bills, 41 pieces of subordinate legislation and one government response. The report was circulated to members out of session. I commend the report to the Assembly.

Discharge of orders of the day

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

> That the following orders of the day be discharged from the *Notice Paper*:
>
> Private Member's Business Order of the Day No 8 relating to the Canberra V8 Supercar Event
>
> Assembly Business Order of the Day No 2 relating to the Standing Committee on Planning and Environment's report No 4 on DV 174
>
> Assembly Business Order of the Day No 4 relating to the Standing Committee on Community Services and Social Equity's report No 2 Accommodation and support for homeless men and their children
>
> Assembly Business Order of the Day No 5 relating to the Standing Committee on Planning and Environment's report No 8 on DV 190
>
> Assembly Business Order of the Day No 8 relating to the Standing Committee on Planning and Environment's report No 9 on the Planning and Land Bill and associated legislation.

Postponement of orders of the day

Ordered that order of the day No 1, Executive business, relating to the Confiscation of Criminal Assets Bill 2002 be postponed until a later hour this day.

Civil Law (Wrongs) Amendment Bill 2002

Debate resumed from 22 September 2002, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (10.51): The opposition will be supporting this bill. The bill is intended to provide a longer-term solution to a problem. It proposes that there will be no right of action for death or injury arising out of the use of a motor vehicle, if the death or injury is caused by an act of terrorism committed before 1 October 2004.

The effect of the bill is that there will not be any right of action for death or injury against the owner or driver of a vehicle who is innocently caught up in an act of terrorism—or against his or her insurer. Hopefully, this bill will not be used at any stage, and we certainly hope we will not suffer such acts of terrorism—but it is important that it be prepared. This bill is consistent in its approach with what has occurred in Queensland and New South Wales—the two other jurisdictions in Australia where compulsory third party insurance is underwritten by private insurers.

The bill provides a couple of exceptions, as were mentioned by the minister. I will not go through those, because I would just be repeating them. Suffice to say that the exceptions are intended to maintain consistency with the bill passed by the Assembly by 17 June 2002—that is the Workers Compensation (Acts of Terrorism) Amendment Act of 2002.

The amendments in the bill are due to expire on 31 December, 2004. Whilst the solution proposed in the bill provides a certainty which the ACT compulsory third party scheme needs to operate in the current environment, it is not intended to be a permanent solution—I accept that. The idea is to encourage a return of reinsurers to the market, and to encourage NRMA Insurance Ltd to endeavour to obtain reinsurance for acts of terrorism on commercial terms.

The bill has been given a finite life. I trust that, if for some reason it needs to be extended past 31 December 2004, the government will bring in a bill to do that. I see the minister nodding, and I thank him for that. I believe that is crucially important but, hopefully it won't be necessary. As I said, the opposition is happy to support this bill.

MS DUNDAS (10.53): It continues to amaze me that the business decisions of insurance companies are having so much effect on public policy. Today the government is asking us to take away people's rights to access to the compulsory third party scheme if the event is caused by an act of terrorism. So we are to waive people's rights to access insurance when injured in a motor vehicle. I am sure it is easy to sit back and think, "It won't occur, so why worry?"

What is the likelihood of such an event occurring? The likelihood of such an event occurring is such that the NRMA Corporation has decided that it will pull out of the market if we do not remove these rights. The ACT Democrats have worked constructively in assessing the insurance crisis. I am appalled at the way insurance companies are able to hold governments to ransom through their own business decisions.

I opposed the Workers Compensation (Acts of Terrorism) Amendment Bill, which saw the ACT government enter the reinsurance market. The bill saw every ACT taxpayer take responsibility for finding money to pay compensation for personal injury or death, in the event that an act of terrorism occurred. This current bill is similar, except no-one is insured, and no-one is reinsured, for such an occurrence. This will leave the injured or relative of the dead with two options—sue the terrorists, or fend for themselves. That will see the onus for protection fall back on the government and, in turn, on the taxpayer.

Thankfully, this bill has a sunset clause, and that makes it slightly more palatable. I hope that, by the end of 2004, the government is confident that terrorism will no longer be an issue, or that we will have sorted through our insurance issues.

MS TUCKER (10.55): It seems fairly clear from briefings provided to my office, and from the explanatory statement, that there is no reinsurance available throughout the world for acts of terrorism. Without reinsurance, any cost of an act of terrorism caused through the use of or incorporating or involving a vehicle would be covered by a third party insurer in the territory.

Presuming 200,000 vehicles in the ACT pool, then the cost of any destructive act would technically need to be borne by the third party policyholders. Failing that, the cost would have to be borne by the NRMA. That would quickly prove to be beyond its capacity, which would, of course, be in breach of the insurance licence issued by the Australian Prudential Regulatory Authority.

I understand that the ACT government has already put itself in a position to carry the responsibility for the impact of such acts, and that this legislation is effectively a fait accompli. The reality is that any terrorist act, even on a moderate scale, would impact on this community in costs of hundreds of millions of dollars. In that case, as with all disasters of such a scale, all the responsibility would fall back on both the Commonwealth government and the local community.

The definition of "acts of terrorism" is identical with the definition inserted into the Workers Compensation (ACT) Act, which is based on the UK acts. I cannot say I am particularly reassured by the comment in the government's response to the scrutiny of bills report that "it is not envisaged that the definition would apply to ordinary, non-violent, political protest action." If something of the kind, where a political protest results in damage, does occur, and the insurance company seeks to argue that it was an act of terrorism, I guess we will just have to wait and see how the courts respond.

The other feature of this bill is that it will expire two years after coming into force. That is on the presumption, or perhaps in the hope, that reinsurers will re-enter this market and once again provide cover which, at the very least, will be dependent upon no more major terrorism events impacting on the developed world. However, I cannot say that current events encourage such faith in me.

MR HARGREAVES (10.58): The minister has explained in detail why it is important for the Legislative Assembly to pass this bill. I therefore propose to keep my comments as brief as is possible.

I would not be speaking in favour of this bill if it were simply about protecting the interests of the insurance company which underwrites the ACT compulsory third party scheme—CTP insurance. Indeed, I have been critical of the provider of that insurance in the past. Nor would I be standing here now if it was about kowtowing to the interests of the reinsurers based in places like Switzerland and Bermuda. The reason I am speaking in support of this bill is because, without the amendment, the ACT may not have a CTP

scheme at all—or, at best, it would not have a scheme the community could afford. This is about addressing the emerging impact of terrorism on an aspect of insurance which affects each and every one of us.

Without reinsurance, it is questionable about whether NRMA Insurance—or, for that matter, any other insurance company—would be able to offer compulsory third party insurance at an affordable rate. Further, it is expected that the Australian Prudential Regulation Authority would express concern about a scheme being offered without adequate reinsurance.

Mr Speaker, I commend the bill to the Assembly.

MRS CROSS (10.59): This bill is an amending bill of the Civil Rights (Wrongs) Act 2002 and the Road Transport (General) Act 1999. The purpose of this amendment bill is to provide, in relation to compulsory CTP insurance, a temporary solution to the reaction by the reinsurance market to the events of September 11. The amendments contained in this bill are temporary in nature. They will last for a period of two years, being due to expire on 31 December, 2004.

The bill has two exceptions. These are that someone who commits or promotes an act of terrorism will remain liable to civil action, and that workers compensation entitlements under the Workers Compensation Act 1951—and corresponding to Commonwealth, state and territory laws—will not be affected.

This is a technical bill which has regrettably been made necessary by the existence of global terrorism. No-one could have imagined that Osama bin Laden could have had an effect upon people's third party insurance premiums but, clearly, the necessity of this bill shows otherwise. I support its passage and look forward to the day—as indeed I expect all other members do—when it will no longer be necessary on our statute books.

MR WOOD (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for the Arts and Heritage and Minister for Police and Emergency Services) (11.01): A lot has happened since 26 September last year when I moved, in this chamber, that this bill be agreed to in principle. On that occasion, I observed that it was only then—in September 2002—one year after the shocking events of the morning of September 11, 2001, in New York, Washington and over the fields of Pennsylvania, that we fully comprehended the implications of the despicable acts of terror perpetrated by al-Qaeda in the skies over north-eastern USA. Indeed, Mrs Cross has mentioned that some of the outcomes could not be envisaged at that time.

I explained that, as a direct consequence of those far-away events, reinsurance—that is the insurance that insurance companies take out against natural disasters and other catastrophes—had become much more expensive, and harder to obtain for all insurers. I also noted that reinsurance, specifically against acts of terrorism, had become virtually unobtainable for most classes of general insurance, including compulsory third party insurance.

We were all wrong to think, if we did, that we know the full measure of the global problem of terrorism and its likely impact on Australia. To demonstrate this, I need only

mention one word—Bali—and the date of 12 October 2002, our very own September 11. The brutal and senseless events at Kuta Beach on 12 October last year reminded us that terrorism is not someone else's problem. It is not something that happens only on distant shores. It is our problem. It is something that each and every one of us potentially has to face, even here in the ACT—and in respect of third party insurance.

We do not overstate the risks. The terrorism experts—it is sad that we need such people—tell us that the risk of a major terrorist attack in Australia is still much lower than in many other parts of the world. However, a low risk is not no risk. Because Canberra houses the national parliament, many other national institutions, embassies and the like, the risk of terrorism here in the ACT may be somewhat higher than in other parts of Australia. That is what this bill is essentially about. It addresses some of the unpalatable facts we have to face in coming to terms with the threat of terrorism.

Under the law as it stands in the ACT, a truck bomb, like the larger of the two bombs that were triggered in Bali, would give rise to claims under our third party insurance scheme. At the moment, that is everyone's legal right. Unfortunately, that is not financially sustainable. It is a simple, incontrovertible fact that the third party insurance scheme could not cope with the sorts of claims to which a terrorist act on the scale of the Bali bombings would give rise. Without reinsurance, it is unlikely that NRMA Insurance could offer cover at a rate the community could afford. I do not like—I am sure none of us do—removing or suspending people's compensation rights. That is why this bill includes a sunset clause. It will apply only to claims arising from acts of terrorism prior to 1 October 2004.

I am hopeful, but would hesitate to say I am confident, that within that timeframe a degree of pre-September 11 and pre-Bali normality may start to return to the international insurance and reinsurance markets. If so, NRMA may again be able to obtain reinsurance for the CTP portfolio on commercially acceptable terms. In that event, we could see the legislation disappear. The government and NRMA Insurance Ltd will continue to pay close attention to this question, particularly as October 2004 approaches. If, on the other hand, there appears no prospect of a return to normality by that date, it may be necessary to extend the temporary measures this bill proposes.

This bill is the best option available. I know, Ms Dundas, that nobody is happy about it. It was a difficult decision to make, but I do not believe there is any alternative. The bill, as we all know, proposes that there will be no right of action for death or injury arising out of the use of a motor vehicle where the death or injury is caused by an act of terrorism.

This means there will be no right of action for death or injury against the owner or driver of a motor vehicle who is innocently caught up in an act of terrorism—either individually or against his or her insurer. This approach is consistent with the approach adopted in Queensland and New South Wales—the other two Australian states where insurance of this nature is underwritten by private insurers. Similar legislation was passed by the Tasmanian parliament towards the end of last year.

Mr Speaker, we reluctantly accept this bill, which will become an Act of the territory. Let us hope the situation improves over the next year or two.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

National Environment Protection Council Amendment Bill 2002

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

> That this bill be agreed to in principle.

MRS DUNNE (11.08): The Liberal opposition will be supporting the National Environment Protection Council Amendment Bill 2002.

The National Environment Protection Council Act was mirror legislation introduced in 1994 to develop national environment protection standards or, as they are called in the legislation, national environment protection measures, or NEPMs.

This bill results from a review of the principal Act in 2000-2001 and brings about a method of simplifying the process of making minor variations to national environment protection measures. It requires ongoing five-yearly reviews of the principal Act and allows the National Environment Protection Council Service Corporation to provide support and assistance to other ministerial councils in the environmental area. It is good public policy. This bill will be mirrored in all other jurisdictions and the Commonwealth. It will provide seamless and uniform legislation across all jurisdictions. We will be supporting the bill.

MS DUNDAS (11.09): The National Environment Protection Council was established following a special Premiers' conference in October 1990 under the Intergovernmental Agreement on the Environment, which came into effect on 1 May, 1992. This council has responsibility for making environment protection measures with the objective of ensuring that the people of Australia enjoy the benefit of equivalent protection from air, water, soil and noise pollution, wherever they live. The council also works to ensure that decisions by businesses are not distorted, and markets not fragmented by inconsistencies in environmental standards across jurisdictions.

The Democrats have been strong advocates for national environmental standards. The creation of the Environmental Protection (Biodiversity Conservation) Act was one such initiative intended to create uniform environmental standards which reflect our international obligations.

The advantages of a streamlined process for minor amendments to environmental standards are obvious. I have no difficulty supporting this aspect of the bill, and hence offer my support to this initiative.

MS TUCKER (11.10): The Greens also support this bill. It represents a streamlining of the provisions of the national environment protection arrangements and arises from a

review of the legislation enacted in Commonwealth, state and territory jurisdictions. We strongly support effective national environment protection. We also support cooperation among the Commonwealth, states and territories to achieve it.

The first two amendments implement the recommendations of the review. The first streamlines the council's processes for making minor variations to a national environmental measure, while the second provides for five-yearly reviews of the act. The third amendment flows from the review of ministerial councils by the Council of Australian Governments.

This review resulted in joint meetings of the National Environment Protection Council and the new Environment Protection and Heritage Council. The amendment allows the National Environment Protection Council Service Corporation, which provides the council with secretariat services, to also support the Environment Protection and Heritage Council. We see these measures as sensible enhancements of the national environment protection arrangements and support the government in implementing them.

MR STANHOPE: (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (11.11): I thank members for their support of this piece of legislation. The National Environment Protection Council Act 1994 is part of a national scheme that establishes the National Environment Protection Council.

The Commonwealth and each state and territory have an act of the same name which brings the scheme into effect. The Commonwealth parliament passed amendments to the Commonwealth act in December 2002. Royal assent was received on 19 December. Those amendments reflected national agreement on a number of issues.

The act provides for one review after five years. It has been decided that it would be worthwhile to have a review every five years, rather than leaving it at just one. There is an amendment to the NEPC Service Corporation that ensures that the NEPC Service Corporation can service other ministerial councils—particularly the Environment Protection and Heritage Council—which is necessary in the wake of the rationalisation of ministerial councils last year.

The legislation also provides for a simplified procedure for minor variations. The procedure for varying a national environment protection measure is set out in sections 19 to 21. New simplified and sequential procedures set out in division 320 will apply to a minor variation.

Section 21A sets out the conditions under which the council can determine whether a variation to a national environment protection measure is minor. This subsection requires the variation to be supported by a unanimous resolution of the council. It must state that the variation will not significantly change the measure.

Subsection 21A(2) then requires the council to prepare a draft of the proposed variation, and a statement which explains the reasons for the proposed variation, the nature and effect of the proposed variation, and the reasons why the council is satisfied it is minor.

Section 21B provides for public consultation before a minor variation is made, so that the public is aware that the council is intending to vary a measure and have the opportunity

to make submissions to the council on the proposed variation, or the explanatory memorandum relating to the proposed variation.

Section 21C provides that, when making a minor variation, the council must have regard to any submissions it receives, for consistency of the measure with the principles of environmental policy set out in section 3 of the Intergovernmental Agreement on the Environment, any relevant international agreements to which Australia is a party, and any regional difficulties in Australia.

There is nothing to be gained and much to be lost by not following the national approach on these matters. The proposed amendments represent sensible and measured changes to the act. I thank the Assembly for its support.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Confiscation of Criminal Assets Bill 2002

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

> That this bill be agreed to in principle.

MS TUCKER (11.15): This legislation is based on the work done by the Australian Law Reform Commission. It is an update of the existing Proceeds of Crime Bill. Normally, work of the Australian Law Reform Commission involves extensive drafting and fine-tuning, through wide consultation. However, in this case, the time was cut short by the federal government. So the committee notes in its report that it has not had the usual amount of fine-tuning.

To give some general background, most other Australian jurisdictions have similarly updated their equivalent bills, but the draconianness of the bills varies. Western Australia is reputed to be the most severe, from this perspective. I understand that the ACT bill is closer to the Commonwealth bill than the WA bill. However, there are some problems from our point of view. I will be moving amendments to address some of these concerns.

There are other problems, such as choosing retroactivity for this scheme rather than a transitional arrangement. Although I do not have amendments for them, I note those parts with some regret. There are improvements in the bill which will make this system operate more clearly—and, no doubt, other members will cover these areas. To reduce the risk of exceeding my time, I will not explain the advantages of the bill.

Basically, what is this about? These types of acts put into practice an understandable principle that people who commit crimes ought not to be allowed to keep the profits of those crimes—in addition to, and separate from, the punishment or rehabilitation determined by the courts hearing the criminal charges to be appropriate. This is a

reasonable principle and one the Greens support. However, as is usually true, getting from the principle to an outcome is where problems arise.

Proceeds of crime laws have been controversial from the beginning, as the scrutiny of bills report pointed out. The government response dismisses some of the discussion as old and out of date. There are, however, arguments which are still relevant, even though, as the government points out, there have been other laws passed in the meantime. The scrutiny of bills report also referred to recognition in the United Kingdom that civil forfeiture regimes ought to comply with human rights safeguards. This is not old and out of date—it was in 2002.

Some of the changes are described as being the means to make tackling organised crime easier, or even possible. That is a fine aim, and is one that could, of course, be achieved in part by taking drug use out of the criminal system and putting it into the health and society care systems instead. However, the aim is fundamentally acceptable. The bill does not limit what are quite extreme powers with regard to larger-scale, corporate or organised crime. In fact, this bill takes a big step towards drawing in other forms of crime.

In this bill, and under the current act, there is a different treatment for serious crimes compared to ordinary indictable offences. People accused of committing serious crimes are likely to lose more of their possessions. Conviction of a serious crime results in an automatic forfeiture of all the property defined as tainted, rather than leaving it up to the relevant court to decide, for that particular case, whether a conviction forfeiture order should be made.

In this new bill, only serious crimes may be dealt with by the new non-conviction based, civil forfeiture based order or a civil penalty order. However, the Proceeds of Crime Act defines serious crimes as serious narcotics offences, organised fraud and money laundering in relation to proceeds of either of the above. This bill will define serious crimes as any crimes with a possible maximum penalty of five years or more in jail.

When the last Assembly created the same definition of "serious offence" in the Bail Act, I pointed out that this would include someone found to have stolen a new mountain bike, or a burglary involving goods with a value over $1,000. This is a major change and one which received scant attention in the introductory speeches and by its champion, Mr Stefaniak.

The explanatory memorandum alludes to organised crime. The speech in the government response to the scrutiny of bills report refers to the increase in organised and major white-collar crime, so there is no attention drawn to the other side of the bill. It is the same motivation—lowering the threshold of the most important powers the police and other law enforcement agents have to use against the most serious crimes.

The test for whether it is a reasonable step to take, to allow those powers to come in at an earlier point, should be weighing the effects of catching people, or stopping more crimes, versus the effects on an innocent person who is accused and against whom these tools are used. That is why, when we saw that the five-year term definition of serious crime could be used for someone stealing a bicycle, we argued that the balance was wrong. The harm

potentially done by letting someone out to possibly steal another bicycle is much less than the harm done by locking up someone who has not stolen a bicycle.

Similarly, we must question whether the harm to be done to society and to individuals involved, because of the risk of getting it wrong in the case of lesser crimes, has been adequately taken into account in this bill. The Law Reform Commission canvassed suggestions for expanding the definition of "serious offences" by adding other forms of crime to the list. In the view of the commission, further detailed examination of particular offences is likely to point to there being such a basis for widening the statutory forfeiture regime—detailed examination of particular offences, not a blanket five years or more in prison. Even Queensland, which had a blanket year definition, used 20 years plus a list of specified offences. Again, the commission did not have the time to do this detailed finessing.

The Chief Minister noted in his tabling speech that the leaders conference in April 2002 had extracted a promise from him to "strengthen our efforts to combat serious and organised crime". There has been clear explanation from the Attorney-General of why we are extending the net for serious and organised crime to include these other offences. The main response I have had to this concern about broadening the net is that it would not make economic sense for the government to prosecute proceeds of smaller-scale crimes.

This targeting follows logically, to some extent. There is not much point proceeding with this type of case if it will cost the state more to recover the profits of smaller-scale crime than will be gained. That is, there is not much point if you are clear that this is not about punishment per se. Confiscation of criminal assets is understood to be not punishment but restitution—setting the financial affairs of the perpetrator or perpetrators and their associates back to where they were before the crime. That is one of the core arguments proponents of this bill and this type of bill use to support the overturning of several long-held and fundamental principles of our criminal justice system.

Although punishment does not now appear in the objects of the bill, I understand it was listed as an object in the exposure draft. Whatever is listed in the objects, this bill substantially expands the boundaries of what may be seized. Tainted property in the Proceeds of Crime Act was defined fairly simply as "property used in, or in connection with, the commission of the offence, or proceeds of the offence". In this bill, it includes anything on the person committing the offence—or allegedly having committed the offence, properly speaking, or soon afterwards—regardless of whether the goods were actually purchased with the proceeds of crime. It includes anything that the person allegedly intends to use to commit a crime. It also includes profits from any artistic works that might be connected to the offence in any way. I will speak more on this aspect in the detail stage.

I note that characterising the effects of this bill, as the government does in the EM as "on assets derived from unlawful activity" is not entirely accurate. It is also anything else an accused person may own and some things that other people may own. The ALRC and others have noted the failure of the previous scheme as regards major organised crime, because of the capacity of the perpetrators to avoid detection—hence, the case for breaching legal professional privilege. That is obviously related to the potential for a lawyer to be seriously involved in crime.

In addition, there is the reversal of the onus of proof as regards legitimate ownership of property, the difficulty and expense to the state of tracing through a labyrinth of paperwork designed to confuse, and the case for only allowing access to legal aid—that is what it seems is meant by "reasonable legal expenses".

I noticed that the Law Society raised concerns about this in its submission. In section 38 of the Act, it says "all legal fees calculated in accordance with the scale of costs for criminal matters determined by the Legal Aid Commission in accordance with the Legal Aid Act". I am not implying that Legal Aid do not do a very good job, but there are real implications here for Legal Aid. We know they are overworked.

These arguments make some sense, but they are breaching principles which protect innocent people from being wrongly convicted—by way of having a more powerful state with access to everything, the defendant being much less well-prepared and, under this scheme, less well-resourced to obtain a lawyer to assist them to understand the charges, argue the evidence, get together the documents, and so on.

This bill is written on the assumption that someone charged is guilty—and that everything must be done to take their property. I am concerned that, in the frustration of failed prosecutions, and perhaps in some law and order push, the government has forgotten the principle of innocent until proven guilty and the principle of a just justice system.

It is at least as important, if not more important than, that our legal system does not penalise innocent people as it is to convict or penalise guilty people. How will Legal Aid cope with this added burden of highly complex cases which previously would have been handled by private lawyers?

The evidence needed to make the application for a restraining order is an affidavit from a police officer which need state only that the officer suspects that a person—called "offender" in the bill—has committed a stated indictable offence. The offence in question does not need to be spelled out in detail. It is sufficient if the police officer suspects that the offender has committed a kind of offence and the affidavit describes the nature of the offence in general terms—that is section 29. We do not require details of the particular property linked to the general kind of offence, nor to the specific day and time.

This is explained as necessary to avoid splitting hairs as to when which part of a complex fraud or organised crime occurred. I understand that—although there are still reservations that we should not go too far. What about all the major non-fraud offences which will also be affected by these new and draconian powers?

The government is also a bit disingenuous in its defence of the civil forfeiture regime without conviction. Yes, there are torts and other civil negligence cases which result in people losing their livelihoods, but those cases are not conducted with all the cards stacked against the person so accused, as will be the case under this law. I do not say this as though it were some game, and that we have to be fair to criminals. This is about being absolutely sure that any person has a fair chance to understand, analyse and argue the case against them, because they may not be guilty.

The Law Society points out that restraining orders prevent use of the property, which could be all of a person's property—this is while they are accused, not found guilty; they may be innocent—except for "reasonable living and business expenses". Who defines what is reasonable?

The DPP is given in this bill, at 43(3) a highly unusual power—to veto the court's assessment of what will be needed as evidence. This is extraordinary. In fact, it shows some disrespect for the authority of the court. The government response says that clearly the court would require the DPP to justify his or her position that the property in question does have evidentiary value.

This is not, though, what members who vote for this bill will be writing in the law. What is written in subsection 43(3) on this point is that, if the DPP has told the court that the restraining order applies to property, the court must not revoke the restraining order without the DPP's agreement. There is nothing there about the court being convinced—the court has to go by what the DPP has told it. It is a great shame that the government has not seen fit to engage with this issue.

The Chief Minister, in his tabling speech, suggests that, through this bill, confiscation of profits could be used against environmental crimes and employers committing serious occupational health and safety offences. What penalty would there be in addition? Would this be an extension of the law for the confiscation of cars doing burn-outs?

To confiscate the property used in the commission of an environmental pollution could mean the factory itself. That is a huge penalty. As much as I would like to stop polluters, I do not want it to be done in this backdoor way. If we are going to have a penalty for crimes, then let them be applied using the standards of proof and evidence and the legal processes required in the criminal justice system.

I have grave concerns that the broadening of the definition of "serious"—and hence the widening net of people subject to less protection from longstanding and core principles of justice—is simply part of a drift towards law and order, rather than a well reasoned and well justified change. The Law Society's submission on the draft bill points out that, "The consequences for the person, and the dependants of the person, are far reaching and could be more onerous than any penalty imposed in relation to a criminal conviction.".

Removing 'punishment' from the objects of this bill does not remove the punishing nature of some of the possible outcomes of the bill. The question of retroactivity—making a penalty apply retrospectively—is unfair, even if the action is clearly not morally acceptable at the time of the offence.

We do not usually make laws retrospective, because it would undermine the security we have in our society. The argument put to justify this retroactive element is that the person was never entitled to the property. However, as I have said, this scheme extends beyond actual proceeds of crime to whatever property the person cannot prove, with the aid of an overworked legal aid lawyer, they legitimately own.

MS DUNDAS (11.30): Mr Speaker, this bill brings into effect an expanded civil forfeiture regime at a territory level. The underlying principle offered by the government

in relation to this bill is that it remedies the unjust enrichment of individuals who profit at society's expense. It is also said that it will deter crime by reducing profits and prevent crime by diminishing the capacity of offenders to finance future criminal activities.

The ACT Democrats are supportive of the principle that criminals should not be able to profit from crime, but the legal arguments that exist around this are quite complex and there are a few vital elements of this legislation that need to be outlined. The first is that civil forfeiture provisions will permit the securing of assets on the basis of civil proceedings. The civil forfeiture regime allows the assets to be confiscated on the basis that they are proceeds of crime, without the need to obtain a criminal conviction. The confiscation of an individual's assets is a significant penalty.

At its heart, this bill is about enabling the territory to impose sanctions on people for alleged criminal behaviour in circumstances where it cannot prove its case beyond a reasonable doubt in a court of law through the criminal justice system. This is a profound departure from the important principles of law and warrants close consideration.

This lowering of the standard means that a person's assets can be confiscated on the basis that they are proceeds of crime even where the tribunal has reasonable doubt as to the person's guilt. Furthermore, there is no requirement that the allegation of criminality be particularised—that is, the person must, on the balance of probabilities, have committed a crime but not a particular crime.

For the purposes of ordering a forfeiture of assets, the court need only be satisfied that some criminal offence or other has occurred, not that a particular offence has occurred. It is a highly contentious proposal that a person who is acquitted of a particular crime can have a substantial penalty imposed upon him or her by the territory for the same alleged activity by confiscating their assets under this legislation.

Once assets are restrained under this legislation, the individual concerned will not have access to his or her assets for the purpose of funding his or her defence to the forfeiture proceedings. This means that people who may have had significant legitimately acquired assets may not be able to fund the sort of defence they would like.

The possibility of capping the confiscation has been raised—such as, only confiscating assets over and above a limit to allow the alleged criminal to fund their legal defence. But, instead, such people will be given access to legal aid where appropriate. They will be assessed for eligibility for legal aid on the same basis as other individuals, although restrained assets will not be included in the means test.

It is not clear that the legal aid system will in all cases provide people with the standard of representation to which they would otherwise be entitled. The juniorisation of legal aid is a major concern. The pay scales are such that some senior lawyers do not make their services available to legal aid clients. This is not to cast aspersions upon the many talented people who represent legal aid clients—some of them are very experienced and very dedicated. However, I do note that pay scales for Legal Aid are currently under review, partly as a result of concerns about the juniorisation of the representation of Legal Aid clients. In this context, it is worth remarking that people who require legal aid only because the state has restrained their assets may be denied experienced representation for which they would be quite happy to pay.

The rationale for this approach in this bill is that, if defendants have access to their assets to fund their legal defence, many of those who know that their assets will be forfeited will use up those assets on frivolous legal challenges. I believe that this would be unlikely but there is an important implication.

The territory can be denied access to the proceeds of crime. This first consideration should not be pivotal. The underlying rationale of this bill relates to preventing unjust enrichment and removing assets that may be put towards future criminal activity. Where those assets are exhausted on legal challenges rather than confiscated, these outcomes are still achieved. This is a crime prevention measure and it should not be seen as a revenue-raising exercise.

One criticism that has been made of such legislative regimes applying in the United States is that the revenue implications have had an inappropriate impact on the manner in which criminals are pursued, with many being pursued through civil regimes. The ACT Democrats believe that in cases where legal aid is called upon, care must be taken to ensure that the ability of defendants to defend themselves is not compromised.

Another major issue in this bill is retrospectivity. The legislation is retrospective in that assets can be confiscated on the basis of criminal activity undertaken prior to the enactment of the bill. This bill would apply even when the relevant offence or conviction occurred before the bill came into force. In part, this is necessary to ensure that any property that might be confiscated under the current act can still be confiscated under the new act, but the result is that new penalties will apply retrospectively to activities that took place prior to the commencement of this law.

The ACT Democrats are very wary of legislation that retrospectively imposes significant penalties. Of course, it is only imposing those penalties on activities that were already unlawful at the time they were committed. However, it does change somewhat the penalties and consequences associated with these activities, and does so retrospectively.

A further problem with this legislation relates to the information gathering powers. The provisions of this bill dealing with examination orders seem to abrogate the privilege against self-incrimination. The important point to make in this context is that civil forfeiture proceedings under this legislation can take place even where no criminal charge has yet been laid, and they may occur concurrently with the conduct of a criminal investigation.

In the civil proceedings the territory can require the defendant to answer questions and provide documents. There is, of course, no such power in relation to a criminal investigation or a criminal trial, where a suspect or accused generally has the right to remain silent. The concern that has been raised is that the territory could use its compulsory examination powers under this legislation to force individuals to answer questions and provide documents that they could never force them to answer or provide under the criminal justice system because of the privilege against self-incrimination. If the territory could then use information derived from these documents or answers in a criminal investigation and trial, it would be as though the privilege never existed. While the testimony and documents provided can not be used against the individual, anything derived from them can be.

In practical terms, there is the potential for this to be used to largely defeat the privilege against self-incrimination. In the High Court case of Environment Protection Authority and Caltex, Chief Justice Mason and Justice Toohey considered the nature of the privilege in great detail. They observed that historically the privilege developed to protect individual humans from being compelled to testify, on pain of excommunication or physical punishment, to their own guilt. They went on to say:

> In one important sense, the modern rationale for the privilege against self-incrimination is substantially the same as the historical justification-protection of the individual from being confronted by the 'cruel trilemma' of punishment for refusal to testify, punishment for truthful testimony or perjury (and the consequential possibility of punishment).

They noted that the privilege is now an internationally recognised human right. As Justice Murphy commented in Rochfort and Trade Practices Commission:

> The privilege against self-incrimination is a human right, based on the desire to protect personal freedom and human dignity.

The International Covenant on Civil and Political Rights states that no person may be compelled to testify against himself or herself in the determination of any criminal charge against them. The courts take Australia's international human rights obligations into account when making their decisions. So, too, should we as legislators give considerable weight to these obligations in making judgments about the appropriateness of legislation placed before us by this government. If the bill does violate the international covenant then it is contrary to international law.

We have before us circulated amendments that seek to address this issue of self-incrimination, and we are mindful of the fact that removing derivative use immunity, which applies in the current Proceeds of Crime Act, is supported by both of the larger parties. What has been suggested is essentially a compromise.

We should also take into account the growing tendency of the government to reverse the onus of proof, as stated in the Scrutiny of Bills report. By placing the onus of proof on the defendant where the information relevant to the issue is likely to be possessed by the defendant, we are dealing with evidence that is obtained in quite controversial circumstances.

The Democrats are not convinced that where an individual has been acquitted of an offence it should be possible for the state to further pursue them for that offence. Professor Dribbs has made the point that, as the level of dissatisfaction with the criminal justice system rises, the state will slowly turn to the civil law as a vehicle for pursuing its criminal justice agenda and that, more and more, the civil system will take the place of the criminal system. It may be that, given the changing nature of organised crime, reform of the criminal justice system is necessary to restore the confidence of all concerned.

To conclude, the Democrats are mindful of the need to ensure that where confiscation has taken place there are proven proceeds of crime. We support the principle that criminals should be denied unjust enrichment from their criminal activities. However,

due to a number of reservations about the operation of this legislation and its impact on civil liberties, as raised by the Australian Law Commission and the Scrutiny of Bills Committee report, we are unable to support this bill as it stands.

MRS CROSS (11.41): Mr Speaker, the main purpose of this bill is to encourage law abiding behaviour through reducing the benefits provided by criminal behaviour. In short, it seeks to take the profit out of crime.

The most significant part of this bill is the implementation and adoption of civil forfeiture, as recommended by the 1999 Australian Law Reform Commission report entitled *Confiscation that Counts.*

Civil forfeiture is a forfeiture not based on criminal convictions but on the principle that it is unjust for a person to be enriched as a result of their own wrongdoing. Some exclusivity is provided in respect of the territory's right of punishment for criminal behaviour and the right of the territory to recover unjust enrichment as a result of someone's wrongdoing.

Historically, the confiscation of criminal assets has been used to target the illegal drug trade, organised crime and white collar crime. This bill, with the addition of the civil forfeiture clauses, means that the catalogue of criminality could now be expanded and used to prevent, or at least discourage, environmental crime, sexual exploitation, and occupational health and safety crime.

I support the passage of this bill and will address some of the Greens' amendments when Ms Tucker moves them, as I believe they have some merit.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (11.42), in reply: I thank members for their contribution to this debate. This is a very significant piece of legislation which raises a number of complex issues. It deals with a whole range of issues going to the onus of proof, the separation of powers and some of the attitudes that we have adopted.

I believe that the provisions that have been included in the legislation are all appropriate and defensible. Some of the arguments and criticisms that have been raised by Ms Tucker and Ms Dundas about the potential of the legislation are distinguishable from some of the more black and white interpretations of issues around the onus of proof and retrospectivity or retroactivity that we are normally confronted with in this place.

I will go to the points that were raised by members. In this context, I might say that the report of the Scrutiny of Bills Committee raised these very same issues and I stand by the response that I gave to the committee on them. The first point that was raised was the issue around retrospectivity. Some people find this notion uncomfortable. I do not think it is true retrospectivity in any event. It seems to me, as I say, quite distinguishable. A person is convicted of a crime—a serious crime, perhaps a murder, perhaps serious drug crimes—and a conviction is undertaken. The crown, the state, becomes aware down the track of proceeds from that particular crime, institutes action to confiscate the proceeds of that serious or heinous or appalling crime, and because that confiscation activity is taken after the crime was committed, some are suggesting, "That's retrospective. You can't do that."

You cannot some time down the track, after somebody has been convicted of a crime, say, "Well, it's too late. They have made $10 million out of some major heroin importation, they have been tried and convicted, they are in prison serving the penalty, you know they have got $10 million sitting in the bank but you can't touch it." It is just arrant nonsense to suggest that the laws of retrospectivity should prevent that from occurring. I just think this is distinguishable.

We are not talking around the application of a retrospective provision to prove criminality, and the Labor Party and the government would stand against that—the suggestion that, "Well, you have committed a crime this day and down the track we are going to change the law on the basis that we want to pursue you for another crime." We would not accept and would never accept that, and generally nor has this Assembly done so. We have flirted with it here and there in a couple of instances, but we are not suggesting that. We are not suggesting here, in any sense, that we are applying a retrospective provision to a second criminal offence. And we need to acknowledge that we are talking here about a civil process, namely a civil forfeiture process, to allow us to confiscate ill-gotten gains.

As is said in the government's response to the Scrutiny of Bills Committee, the mere fact that the mechanism for recovering illegally obtained benefits did not previously exist does not make those assets any cleaner. The assets are still tainted. Offenders are not entitled to continue to enjoy the benefits derived from their illegal activities simply because the legislation came into effect after they had committed the crime and whilst they were serving out their sentence in prison, waiting for the day that they are released so they can withdraw the $10 million that they have sitting in the bank.

So I do not believe the arguments against retrospective legislation, particularly as it applies to the criminal law—and that is the sense in which we use it—should even be used in this debate. It is simply just not relevant to the debate around a civil forfeiture procedure for the confiscation of proceeds of crime.

Mention was also made of the operations of the automatic forfeiture procedures within the legislation. I have to say—I will probably need to look at the *Hansard*; and Ms Tucker may take issue with me on this—that I do not believe that Ms Tucker's explanation of the operation of the automatic forfeiture procedure is how the legislation operates. It is the case that there is an automatic forfeiture regime. It is in fact a feature of the existing scheme. All Australian confiscation schemes derived from the 1987 model, on which the previous Commonwealth and ACT proceeds of crime legislation was based, have had an automatic forfeiture regime.

It needs to be noted that offenders, and any third party interest, have the capacity to seek to exclude assets from restraint so that they are not automatically forfeited upon conviction for a serious offence. I cannot recall from your speech, Ms Tucker, whether you acknowledged the discretion that exists within the court to exclude certain assets from automatic restraint. But that is a feature of the legislation. The legislation does provide the court with a discretion to exclude some assets. So I think the essential point that you were making was based on a misreading of the legislation.

Other issues were raised. Once again, in particular Ms Dundas—and I think you touched on this, too, Ms Tucker—I think misunderstood the provision in relation to legal defence. I honestly think that you did not read through sufficiently issues in relation to the capacity to use legally gotten funds or resources to defend a legal action. Each of you made a case around the poor, downtrodden criminal, who has had all their assets confiscated and is thrown upon the mercy of the Legal Aid Commission. We are told that they no longer have the capacity to defend themselves because all their assets have been forfeited before they have been found guilty.

But clause 38, which is the part of the bill that goes to this point, provides a clear discretion in the court to allow the release of any funds that quite clearly are not in this category. There may be money in the bank, a house or a share portfolio. Who in Australia in this day and age, with tax file numbers, pay slips and all the other evidence we rely on, cannot show that their assets were lawfully gained? The legislative scheme is quite explicit. Clause 38 (1) states:

> A relevant court may, in a restraining order or an order under section 39 (Additional orders about restraining orders and restrained property) varying a restraining order, allow a person's legal expenses—

this is what it says—

> in defending a criminal charge to be met out of the restrained property of the person, or a stated part of the property.

The clause goes on to set out the circumstances in which that will be done. It provides explicitly that for property to be released from restraint for expenses, the applicant has to be able to show that the property was "lawfully acquired by the person, is not tainted property and does not have evidentiary value in any criminal proceeding". The exception in relation to lawfully acquired property is quite clear and explicit.

If somebody who is being pursued for some serious offence—and we are talking here about serious offences—cannot prove that assets such as money in the bank, a share portfolio, a home or a car relate to money that was legally obtained, then there is something pretty crook. So the exception is broad and the discretion is absolute.

The court can give a discretion to any person in respect of any property that they can prove to have been lawfully obtained. Who in Canberra today simply cannot provide some paper trail for any money or any asset they have got in their possession? Who, in this day and age with the paper trails that exist, cannot do that? I will tell you who cannot. Criminals, crooks, serious offenders—that is who cannot. Anybody else can, and the legislation is explicit and makes explicit exception in those circumstances.

Another issue that was raised related to the powers of the DPP. I acknowledge that these are complex issues. They are issues that the government thought long and hard about, to the extent that the particular power that has been provided to the DPP does, at first blush, touch on issues around the separation of powers. Once again, I would refer members to the following government response to the Scrutiny of Bills Committee, which also raised this issue:

> The Committee has commented on clause 43 (3), which requires the Court to obtain the agreement of the DPP before excluding from a restraining order any property that has evidentiary value in a criminal proceeding. The Government acknowledges that it is unusual to make a power of the Court dependent on the agreement of a public official. In this case, the Government believes that this provision is essential to ensure that the actions of the court in releasing property from a restraining order do not result in the loss or destruction of essential evidential material. As the officer responsible for conducting prosecutions in the ACT, the DPP is better placed than the courts to know whether a particular item of property will be produced as evidence in a future trial. Clearly, in exercising the "veto" under this provision, the court would require the DPP to justify his or her position that the property in question does in fact have evidentiary value in a criminal proceeding.

As I say these are difficult issues. We acknowledge the uniqueness of that particular power, but once again we believe it is reasonable and that there are protections insofar as the DPP will be put to a test in relation to any application to exclude certain matters on the basis of their potential evidentiary value.

I will touch on another issue before concluding. Ms Tucker raised serious concerns about the definition of "serious offence". The definition of "serious offence" is essentially an indictable offence with a potential penalty of more than five years, I think it is. This is the subject of one of Ms Tucker's amendments, and we can perhaps discuss this issue when her amendment is being debated. Ms Tucker has also foreshadowed amendments in relation to literary proceeds, and we will perhaps pursue those issues.

I think it does need to be said, though, that in relation to the definition of "serious offence" we are talking about offences that are indictable, that do attract a penalty of more than five years imprisonment. These are genuinely serious offences. The government has chosen not to distinguish between one serious offence and another, as Ms Tucker is inclined to do. Ms Tucker is inclined to narrow the definition of "serious offence" down to issues in relation to drugs, issues in relation to fraud, and I cannot quite remember the other. But, essentially, Ms Tucker has imposed her own definition of the sorts of offences that organised crime, in her view, is engaged in.

Ms Tucker would exclude from the automatic forfeiture legislation proceeds from a gang of extortionists. Why would you pursue the proceeds of a drug cartel but not a cartel of extortionists? Why would you exclude murderers? Why would you exclude the Chopper Read case? Why would you exclude murderers from automatic forfeiture provisions? What if there were a cartel of hit persons? If you are a hit person, if you are a Neddy Smith, you are excluded by Ms Tucker. So you exclude murderers, you exclude extortionists, you exclude burglary rings, but you include drug traffickers and fraudsters. I just cannot see the sense in that. Serious crime is serious crime; these are heinous crimes. I am inclined to ensure that drug traffickers not profit from their proceeds of crime, but I also do not think murderers should either.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 9, by leave, taken together and agreed to.

Clause 10.

MS TUCKER (11.58): I move amendment No 1 circulated in my name *[see schedule 1 at page 489]*. Clause 10 is concerned with the definition of "tainted property". I am seeking to omit clause 10 (2) on the grounds that the words "or was intended by the offender to be used" exceptionally broaden the definition. This could be explained as removing the need to wait for crime to actually be committed, of the risk of waiting too long to catch someone in the act. There could be serious legal consequences for a person, particularly in view of what is contained in clause 10 (2), which states:

> … any property found in the possession of an offender at the time of, or immediately after, the commission of the offence is taken to be the property that was used, or was intended by the offender to be used, in relation to the commission of the offence, unless the contrary is established by the offender.

This becomes tainted property which, in the case of conviction of a serious offence—a maximum penalty of five years or more, which includes the penalty of some stealing offences—will be automatically forfeited on conviction if the DPP makes an application for a restraining order. This is reversing the onus of proof, not in relation to proceeds of crime but in relation to anything the offender or alleged offender had on them at the time of allegedly being about to commit a crime.

It might be a nice feeling to take away the instruments of crime, but not everything should be taken away unless it can be proved that it was to be used for that purpose. This is where this bill really crosses the line from removing proceeds of crime to being an additional punishment. This change in approach is reflected in the change of name of the bill. It is no longer just about proceeds of crime; it is about the assets of someone convicted of a crime.

Mr Stanhope was just suggesting that I had invented a definition for "serious offence". We are using the current definition. If we were inventing our own definition, I can assure you it would not look like the one we have in the bill.

Basically, though, this question is about the onus of proof. It may be easy enough to prove that you legitimately own something when you are dealing with a big business offence and the materials involved are itemised, receipted, et cetera. Mr Stanhope disagrees. He thinks that everyone in Canberra would have a paper trail for their possessions. I do not think that shows he is in touch with the situation of a lot of people in Canberra, particularly in respect of possessions.

It is important to make the point that an opportunity is being given to punish someone in what can be a substantial way. In addition to the penalty decided on by a criminal court, the punishment may materially disadvantage dependants. It is proposed to take away the getaway car. But is this also a family car? A family car may sound like a stupid choice of getaway car, but smaller drug dealers, for example, have been known to use such

vehicles. If we want to add anything they own to the penalty for a whole range of crimes, then let us be up-front about it and amend the Crimes Act.

Mr Stanhope gave examples of certain crimes which he said were heinous crimes and, as such, should all be included in this bill. But I have always understood that the rationale and justification for this bill have always related to organised crime—to corporate fraud and complex crime. That is why we have this particular legislative response, which does, as I have said, undermine some basic principles but which is justified because it deals with very complex crime.

We are moving into a very different range of crimes—I am not necessarily saying that they are not serious crimes—with this legislation and I do not think there is justification for that. As I said, the main justification is the need to combat corporate and organised crime. I understand that that was the main justification raised in the national discussion as well.

MS DUNDAS (12.02): The ACT Democrats will be supporting this minor change. Proximity, either temporal or spatial, is not proof that an asset is due to profits of crime and the onus should be on the territory or their agency to prove that the asset is tainted property. For example, confiscating a vehicle following a house-breaking incident does not necessarily mean that the car was a proceed of crime, and the definition should be changed appropriately. Hence, I will be supporting this amendment.

MRS CROSS (12.03): Mr Speaker, I have read the Greens' amendments and I will be supporting their amendment No 1. The seriousness of this bill cannot be overstated. However, it is important that, in attempting to deal with the seriousness, we do not allow overkill.

Clause 10 (2) is too broad because it refers to "any property found in the possession of an offender at the time of, or immediately after, the commission of the offence", and is taken to be property that was "used, or was intended by the offender to be used, in relation to the commission of the offence, unless the contrary is established by the offender". My concern is that these provisions may unfairly include the property of the innocent members of an offender's family. This provision is, therefore, too broad and, accordingly, I will be supporting Ms Tucker's amendment No 1.

MR STEFANIAK (12.04): Mr Speaker, the opposition will be opposing Ms Tucker's amendment. When I spoke during the in-principle stage of the bill I indicated that this bill basically replicates a Commonwealth bill and dovetails with what New South Wales and Victoria are already doing; that it is not nearly as severe as the Western Australian bill, which is going to be adopted by the Northern Territory and Tasmania; and that Queensland is going to adopt our bill.

I think it would be a retrograde step to take out clause 10 (2). I just draw to the attention of members looking to support the amendment that the subclause contains the proviso "unless the contrary is established by the offender". I appreciate that those members probably do not know what happens in a court, but those words mean that if the offender can show that, on the balance of probability, the car that just happened to be used was in

fact the family car—it probably was not even the offender's—that may well be enough to ensure that that car is not taken as part of the proceeds.

I think the examples of tainted property that are given in the bill are eminently sensible. I would also remind members of the fact that under the old bill, the DPP, on behalf of the people of the ACT, had an immense amount of difficulty getting proceeds of crime forfeited to the state. Last year only about $40,000 out of $550,000 was actually forfeited. If you are going to gut this bill, a lot of criminals will be laughing all the way to the bank or wherever they are hiding their ill-gotten gains.

I think there are quite sensible provisions in the bill, including one which allows an offender to say, "Hey, no, that property wasn't the proceeds of crime," and a court will take that into account. Courts are used to doing that and have been doing so for decades.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (12.06): The government will not be supporting the amendment. I think it needs to be recorded that all of these provisions are not absolute, that there are exemptions. As Mr Stefaniak has said, if a person from whom property has been confiscated can show to the court that a case has not been established, then the court will not agree to the confiscation.

We need to read clause 10 (2) quite precisely. The words used are:

> … any property found in the possession of an offender at the time of, or immediately after, the commission of the offence is taken to be property that was used, or was intended by the offender to be used, in relation to the commission of the offence ...

I think that is quite explicit; it is narrow. It is only property that was with the offender at the time of the offence or that was in his possession immediately after. So we are talking about circumstances in which the authorities have arrested, restrained or detained an offender, either at the time of the offence or immediately after, and it can be proved that that person had particular property with him at the time.

Mr Stefaniak gave the example of a car being used as a getaway vehicle for an armed robbery. I do not think it is unreasonable to argue that the legislation should apply to tools of trade that can be utilised in major crimes. The whole basis and scope of this legislation is to take the tools of trade from criminals. I think that is appropriate. I think the words "unless the contrary is established by the offender" give sufficient safeguards, and to that extent I have that degree of faith in the courts.

Amendment negatived.

Clause 10 agreed to.

Clause 11 agreed to.

Clause 12.

MS TUCKER (12.09): I move amendment No 2 circulated in my name *[see schedule 1 at page 489]*. This proposed new section would mean that someone who has committed a crime and then produces some artistic work that can be linked in any way to the crime, or to the notoriety arising from that crime, could possibly be hauled before court again to defend why they should retain any profits from the artistic work.

On one level I can understand the motivation, but we should think about how this would really affect particularly disadvantaged, socially excluded and marginalised people, who you find make up most of those in the criminal justice system. Imagine someone whose horizons have been expanded by the art program in a prison, such as in the Northern Territory's program, and whose art has helped them to work through what they did, what it means, why; which has helped them find some self-acceptance, some role for themselves and some way forward. These are rehabilitation programs for people who have committed some crime.

In the "ending offending" project in 1999, over 150 prisoners in Alice Springs and Darwin were engaged in producing artistic material—songs, stories, paintings, a web site, et cetera. These works "addressed the issues of offending and alcohol and drug use". In this project, any profits from the sale of the artistic works "will be directed into community-based projects". This is part of the rehabilitative function; it is part of the "mutual discourse between the prisoner and the community".

The end effect in terms of allocation of the money may be the same, but there are worlds of difference between being part of a project that uses the proceeds for community ends and having the proceeds ordered from you by a court to be used for ends determined by the government.

What a huge difference it is for a person to be able to move from a sense of being worthless, of having to take everything they can get because no-one is going to give anything to someone they feel is useless, to being able to experience for the first time the feeling of making something beautiful or intriguing with their own hands, and perhaps selling that work. What if they are taken to court and the legitimacy of that work is challenged? We are familiar with the law and the justice system, and therefore it is easy for us to imagine somehow ticking off some boxes against the safeguards that are contained in the bill. But there is nothing safe about having to go back to court to justify yourself when you have just, for the first time, seen yourself as having something to give.

Some may point to Chopper Read's writing as an example of the sort of people we do not want profiting from artwork based on their crimes. It is hard for victims of crime to confront the apparent success of such persons. But that work and the subsequent movie have given us an insight into the world of criminals and criminal society, which revolves around being in and out of prison. There is no way to authenticate that without artistic works coming from prisoners.

Under the definition and the list in the measure now before us, the profits from Chopper Read's book may have been taken away. He may have been frustrated, left the doorway he took unopened and continued on with his violent life. That he did not do this is partly due, it seems, to the proceeds of the writing based on his crimes, and certainly the profits

were helped by his notoriety. In my book, that is a kind of rehabilitation; it is ultimately and potentially a benefit to society.

How do street worker art programs with youth at risk—youth who have previously committed crimes—fit with this legislation? Arguably, a fairer way could be devised to take away artistic proceeds related directly to people exploiting the crime they have committed. The families of Chopper Read's victims may feel very affronted by a speaking tour, but what about the media profits from the exploitation of the sensational value of crime? What does it say about us if we lap it up as a society?

I think this is a more complex issue than potentially people thought when this bill was drafted. I think it is worth a re-think and I hope that members will do that.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (12.14): Mr Speaker, Ms Tucker's concerns are reflected in a number of other amendments around this vexed issue of profiting or benefiting from artistic or literary—however described—proceeds. The provisions contained in the bill are a fairly true reflection of the recommendations of the Australian Law Reform Commission in its report on the operation of the Proceeds of Crime Act and how to better target it to address issues particularly around serious or organised crime. These are issues that governments around Australia have determined through the COAG process at heads of government level to address seriously—that we need to take seriously our attack on crime, and in particular organised crime, in Australia.

I guess that determination arose in a way from the point that Mr Stefaniak made a minute ago around just how unsuccessful the existing proceeds of crime legislation is. It is derisory. Over the last two years, in total the ACT has managed to have forfeited, I think, something in the order of a grand total of around $50,000. The current legislation simply does not work, and that was the situation and the circumstance around Australia. The proceeds of crime legislation was not working in any jurisdiction. The power of the state was simply not equal to the power of organised crime, to the point that at the time one was forced perhaps to reflect on whether or not organised crime brought more resources to bear in the protection of their assets and their interests than the state was able to provide through the funding of police forces and directors of public prosecution.

Jurisdictions around Australia have been significantly unsuccessful in attacking the proceeds of crime. Look at our stats here in the ACT. The success rate has been a derisory. Mr Stefaniak mentioned $40,000 in the last year. I think over the last two years it is less than $50,000. The year before last it was almost nothing—$5,000 or something.

We have just been so unsuccessful. And you have to ask why. There is an issue here around the resources that crime brings to bear—the access that criminals have to very good advice; to the advice of top-line lawyers; the advice of top-line accountants; their own auditors; their capacity to launder their funds. They are enormously successful at what they do: at ripping off the community, robbing the community, and reinvesting their funds and not being detected; and, when detected and prosecuted, having arrived at schemes and arrangements to protect their ill-gotten gains.

We just have not been successful. It was in that context that the Australian Law Reform Commission looked at schemes around Australia. Issues in relation to the literary or artistic proceeds provisions in this bill are taken directly from the Australian Law Reform Commission's report. I will read the summary of the Law Reform Commission's recommendation in relation to this:

> That the POC Act should provide for the confiscation by means of a pecuniary penalty order of any profits derived by the defendant, or by any other person on the defendant's behalf, or at the request or by the direction of the defendant, from any commercial exploitation of the defendant's criminal activities in circumstances where the marketability of the product generating those profits is related to an indictable offence or offences committed by the defendant.

That is our situation; that is our circumstance. The recommendation continues:

> Such confiscation should equally apply to persons found on the civil burden of proof to have engaged in prescribed unlawful conduct to which the recommended new non-conviction based regime applies.

That is what we have done. It continues:

> For the purpose of such confiscation, "product" should be widely defined as any publication whether written or electronic, including any media from which visual images or words or sounds can be produced, as well as any live entertainment or representation.
>
> The power of the court to make such a pecuniary penalty order should be discretionary.

Once again, that is what we have done. The recommendation continues:

> However, in determining whether to make the order, or whether to apply the order to the whole, or part only, of the profits, the court should have regard to
>
> - whether it is in the public interest to confiscate the profits;
> - whether the product has any general social or educational value, and
> - the nature or purpose of the product including its use for research, education, rehabilitation or deterrence.
>
> No time limitation should be prescribed in relation to applications for the making of pecuniary penalty orders in respect of profits derived from the commercial exploitation of unlawful activity.

Ms Tucker goes to all the issues around rehabilitation and the importance of allowing people to find some self-respect and some sense of worth, and we acknowledge that that was the basis of the recommendation that the Australian Law Reform Commission made; indeed, that is the basis of the provision that was included in the legislation.

Ms Tucker did not go in her comments on this provision—the issue around artistic product—to the exceptions. She did not mention the exceptions recommended by the Australian Law Reform Commission and explicitly spelt out in the act. Once again, I just do not know why we do not trust the court to apply the quite explicit exceptions contained in the legislation. The greatest complaint made about ACT courts is that they are soft on criminals and soft on crime. It is the constant refrain we hear. Yet, in a circumstance such as this the inclination is to throw this out altogether. For heaven's sake, don't think that I accept those criticisms, but it is a criticism that I hear. I don't accept those criticisms. I think the courts are fine. I think their attitude and approach to the criminal law and to justice and sentencing is fine. I support our courts.

The bill contains a definition of the notion of artistic profits derived by an offender from the commission of an offence. For the sake of completion—this comes up again in other amendment—I will read the definition in relation to this issue. Clause 81 states:

> (1) In this Act:
>
> ***artistic profits***, derived by an offender from the commission of an offence, means property, or any service or other advantage, derived from the commercial exploitation of—
>
> (a) the notoriety of the offender, or someone else involved in the commission of the offence (***another involved person***), that results from the offence; or
>
> (b) the depiction of the offence or the circumstances surrounding the offence; or
>
> (c) an expression of the thoughts, opinions or emotions of the offender, or another involved person, about the offence.
>
> (2) The commercial exploitation may be by any means, including, for example, in—

visual recording, sound recording, et cetera, printed material, radio, television production and live entertainment—

> (3) A relevant court must allow artistic profits as benefits for section 80 (b) (Meaning benefits derived by an offender), unless it is satisfied that it would not be in the public interest to do so.

"Would not be in the public interest to do so." This is the significant provision here; it is the provision that would be relied upon by a person such as a person described by Ms Tucker. I have no issue with Ms Tucker's concern about the need for rehabilitation. One of the four tenets of corrections in our criminal justice system is, of course, rehabilitation. Rehabilitation is as equally important as any other, and we are committed to that. But we need to go to this, and we need to have some faith in it. We just should not be proceeding from the automatic assumption that you cannot trust the courts, because you can, despite the fact that sometimes some of us might have thoughts about particular issues and particular instances.

I do not think in developing legislation on a difficult subject such as this you can proceed, as I think Ms Tucker does, from the assumption you cannot trust coppers and you cannot trust courts. At some stage you have got to just let yourself go and trust a little bit.

The court is bound by subclause (4), which states:

> (4) In deciding whether it would not be in the public interest to allow artistic profits as benefits, the court must have regard to the following matters:
>
> (a) the purposes of this Act;
>
> (b) whether the commercial exploitation has any general social or educational value;
>
> (c) the nature and purposes of the commercial exploitation, including its use for research, educational or rehabilitation purposes;
>
> (d) the seriousness of the offence;
>
> (e) how long ago the offence was committed.

Subclause (5) states:

> (5) Subsection (4) does not limit the matters to which the court may have regard.

I accept the difficulty of some of the issues and concepts we are dealing with here today. There are circumstances in which some criminals exploit their criminal activity in a quite shocking and outrageous way, and this provision simply circumvents or makes more difficult their capacity to do that.

But if we are talking here about education, rehabilitation and people trying to build a new life for themselves, then of course we are not going to punish them for that. We are not going to be vindictive about it. This is not an extra form of punishment. Certainly it is a deterrence, certainly I think it is legitimate, but it is not appropriate to suggest this is just vengeance, that this is revenge, that this is cracking down on an undesirable class of people for the purposes of vengeance or for the purposes of adding a second level of punishment. It is not.

MR STEFANIAK (12.24**)**: Mr Speaker, the opposition also will not be supporting Ms Tucker's amendment. Indeed, we would agree with virtually everything the Chief Minister has said, which is a bit rare in this place.

Mr Stanhope : A bit worrying.

MR STEFANIAK: A bit worrying—I said "nearly everything". In this instance, I think the Minister made some very good points. Let me say that the Australian Law Reform Commission is hardly a body of rednecks. It is a body comprised of some very eminent jurors; people experienced in all aspects of the law; people who are experienced not only perhaps in the prosecution side but also in the defence side; people who have spent a lot of time on bodies such as the Law Society and the Bar Association. I think we need to give due credence to what they say on this issue.

My second point relates to a matter raised by Ms Tucker. Let me give an example, which I think is a good one, of how this legislation would operate, and I think most ordinary

citizens in this community would want to see this provision remain. The example is of Jane Citizen who commits an indictable offence, writes a book about the commission of the offence and then directs the publisher of that book to pay the royalties to her husband and not to her. The royalties, of course, would still be derived by Jane Citizen because they were paid to her husband at her direction. That would be an example of profit which she would not be entitled to.

The Chief Minister mentioned Chopper Read. The Chief Minister also mentions quite correctly the discretion the court has. He outlined the matters in the bill which the court has to take into account. The Chief Minister is quite right in saying that the criticism our courts in the territory get is that they are far too lenient on criminals. I would not necessarily agree with his other comment—I think Australia-wide it has been shown that we have the most lenient courts in the country. I certainly think—and I have been saying this—they should be a bit tougher. I have no dramas about saying that—I think they are too lenient. But Mr Stanhope is quite right in saying that they are more than capable of exercising a discretion.

Might I say that perhaps there will be some people who will criticise the courts as being overly favourable to criminals when they exercise their discretion. They will say, "Maybe that should have been confiscated. Why didn't the court do it?" But that is a case of the court actually exercising its discretion. That discretion is set out in this bill. There are things that the court has to take into account and they will be taken into account.

Anybody who has had any experience in our courts would know that the courts will in fact bend over backwards to be as fair as they possibly can in exercising their discretion. They will take all of this into account. They will abide by this statute. Obviously Ms Tucker has some worries and she mentioned them on the ABC a couple of weeks ago. But these are the sorts of things a court will take into account. It may well be that in many of those instances they will say, "No, that is not the proceeds of crime, that is not what this is all about, that is something quite different." That is an example of a court exercising its discretion.

They may perhaps also say that quite clearly this is something that is a bit like the example of Jane Citizen, or Chopper Read, or whatever—"No, sorry, proceeds of crime." Again, they would be exercising their discretion. They are paid very good money to do that, Ms Tucker, and they do, on an everyday basis, exercise their discretion. It is not as if this is just absolutely black and white. They do have a discretion, they have to take certain things into account, and they will take those things into account. I am sure that occasionally they will be criticised by whatever side who think they might get it wrong, but that is the nature of our system. But they do have that discretion and they will exercise it. I do not know whether Ms Tucker really quite appreciates how that works and what that does mean in reality.

MR PRATT (12.29): Mr Speaker, I rise to make a quick observation in regard to Ms Tucker's amendment. Of course we must support initiatives that allow convicted criminals to be educated and rehabilitated. That is axiomatic. But I fail to see what all the fuss is about with respect to courts using their discretion to stop criminals from profiting from their deeds. It is incredible that we should be concerned about that. I just again ask the question: where is the damn balance in respect of this amendment? Are we fighting for the rights of the criminal or are we more concerned about the rights of victims?

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

Sitting suspended from 12.30 to 2.30 pm.

Questions without notice
Economic discussion paper

MR SMYTH: My question is for the Minister for Economic Development, Business and Tourism. Mr Quinlan, in this year's budget you allocated $250,000 to develop the economic white paper, which is largely a statement of, in your own words, "the bleeding obvious". The allocation was for this year only, with no allocation for future years. As it appears certain that you will still be working on this paper next financial year, has the development of this statement of the bleeding obvious gone over time and over budget?

MR QUINLAN: Thank you for the question, Leader of the Opposition. I do not know that it will flow over to next year. You are probably aware that budgeting is a fluid process: you do it once a year and revise your estimates. That happens from time to time.

Despite what you might want to believe about it, the economic white paper is supported by a considerable body of work—some being done by external consultants, complemented by work done within the department. In terms of budget funding, one probably does not need to fund the department with other than the normal operational funding.

In terms of the external consultants, it is problematic as to whether further consultancy will be required. Further consultancy might be required if, as we are now anticipating, there are some very innovative ideas flowing from that side of the house, which might require some support and investigation. As I have said, budgeting is a fluid process, and a lot of the external work—the ACIL work, the examination that we have done and, going even further back, the work that we did with the commission of audit—becomes the body of work upon which this discussion paper is based.

MR SMYTH: I have a supplementary. The *Canberra Times*, in your supplement, said yesterday that the white paper was expected by the end of the year. Was that the financial year or the calendar year?

MR QUINLAN: Oppositions are there to oppose, make mischief or whatever, and that is fair enough, but they are trying to build a case that all of a sudden this is an urgent thing. Before the last election, we committed to produce an economic white paper, and we will do that.

Mrs Dunne: Why did you have this special appropriation if it wasn't urgent?

MR QUINLAN: To pay for the external consultants. Don't you listen? Well, selectively. Sorry, Mrs Dunne. As I said in answer to the first question, if it is necessary to do further work and pay consultants for it, then we will. If this is a contrived urgency that you are trying to build and then say, "It's late, it's late, it's late!"—well, sorry. As I have said right from the start, we want to do this job and we want to do it thoroughly.

It is based on a whole series of reports that have been garnered and have been paid for, and it does not necessarily follow that we need to make that external expenditure in the future to complete the job. We are now expecting, from a number of quarters, the innovative suggestions that some thought were lacking in that discussion paper. So I am really looking forward to an exiting time.

Trees in Nettlefold Street, Belconnen

MS TUCKER: My question is to the Minister for the Environment, Mr Stanhope, and relates to the trees on Nettlefold Street, Belconnen. I did give the minister some notice of this question because it includes some details. Given the importance of these trees to the Belconnen community and that it appears from an assessment dated 3 April 2002 that trees numbered 11, 12, 13, 14 and 26 were not assessed as an unacceptable risk to public/private safety, whereas in a recent assessment dated 8 January 2003 all those trees were assessed as an unacceptable risk to public/private safety and given also that there was not proper consultation with the community on this matter and the fact that the government is aware of other expert opinion that does not agree with the latter assessment, will the minister agree to have these assessments redone by an appropriately qualified person to be determined in consultation with the community organisations and members who are trying to protect those trees?

MR STANHOPE: I thank Ms Tucker for the notice but, I regret, it was not quite long enough. I am still trying to get a response to the specific issue raised around the apparently different assessments made. I will have to have that checked.

In relation to the Nettlefold Street trees, however, the Conservator of Fauna and Flora made a decision to approve tree-damaging activities on block 12 section 2 Belconnen, which is on the corner of Coulter Drive and Nettlefold Street. The block was sold in, I think, 2000 and purchased by an owner of one of the major liquor outlets in the ACT.

The decision made by the Conservator of Flora and Fauna permitted the removal of seven trees and ground work within the tree protection zone of five trees. The conservator's decision took into account the Commissioner for the Environment's recommendations in the report on his investigation into the protection of remnant yellow box and red gum trees on block 12 section 2.

Six of the seven trees approved for removal were determined by the Conservator of Flora and Fauna to be either in decline, with a short life expectancy, or to present an unacceptable risk to public or private safety. One tree was approved for removal on development-related grounds. The tree is in poor form and likely to be hazardous when mature.

If the site were to be reacquired and turned into a park, removal of the trees would be necessary, I am advised, if there were to be public access to the site. The reacquisition of the site was raised when my colleague was Minister for the Environment. I believe that both he and the Minister for Planning, Mr Corbell, consulted on that decision. I understand that at the time the expectation was that reacquisition of the site would have cost the ACT government between $750,000 and $1 million. At this stage, that is not a priority for ACT government expenditure.

The conservator has imposed a number of conditions that will provide additional protection for the important trees. These include the preparation of an arboricultural management plan which will outline measures to ensure the long-term health, viability and safety of the trees, including the establishment of tree protection zones fenced off during construction. More broadly, the government is undertaking studies to support the conservation of woodlands, including endangered yellow box/red gum grassy woodlands. Intact remnants of the woodland communities will remain a higher focus of protection than individual trees.

In relation to that, it needs to be said that the trees on block 12 section 2 are not described by the Conservator of Flora and Fauna and I do not believe they are described by the Commissioner for the Environment as remnant woodland. They are individual trees that are the survivors of woodland that covered the particular area. My advice is that there is absolutely no notion or expectation that the trees could be described as woodland. Half a dozen trees, regrettably with no understorey and no connectivity with the broader environment, cannot be described as woodland.

Individual trees by themselves, as beautiful as they are, do not a woodland make. These are amenity trees. They are beautiful trees. The largest of the yellow box is an absolutely magnificent tree. It is one of the trees that will be saved by the conservator's decision in relation to this issue.

I do regret that the subeditor, in a recent *Canberra Times* article in relation to the trees, described that beautiful yellow box tree as one of the trees that would be removed. It was just a bit of subtle subediting licence to photograph perhaps the most beautiful tree in Belconnen and then caption it as a tree under threat when it is not. That is regrettable, but I am sure that it will not happen again.

These trees, as I say, are beautiful. The area is not remnant woodland. There is no understorey. There is no connectivity to a broader woodland ecology or environment. We have a number of surviving trees. Thank goodness they have survived, and they will continue to do so. They are very significant amenity trees. They have a significant role as habitat. But the area is not a woodland. It is not a woodland in the view of either the Conservator of Flora and Fauna or the Commissioner for the Environment.

Were we to reacquire this block, were we to find the $750,000 to $1 million that would be required for us to rebuy this block from the developer that bought it when it was put up for sale by the Liberals in the previous government, and convert the area into a park, the conservator advises me that 90 per cent of the trees that have been assessed as dangerous would continue to be assessed as dangerous and, as a response to our duty of care to the residents of Belconnen, would be removed in any event.

MS TUCKER: I have a supplementary question, Mr Speaker. My question was not answered. I am assuming that was because the minister needs to get further information about the different assessments of the quality of the trees. My supplementary question is: is it normal practice for the Conservator of Flora and Fauna to make the provision of an explanation of a decision to members of the community conditional upon their not discussing the contents of that meeting until the close of business the following day?

Will the minister investigate the use of this practice and, if it is to continue to occur, explain the rationale to the Assembly?

MR STANHOPE: Thank you for your supplementary question, Ms Tucker, as testy as it was. Yes, it was very nice of you to give me 35 minutes notice, Ms Tucker, but I do have other things to do. I was not in a position to rush off—

Ms Tucker: You have a whole department to do it; it should be there like that.

MR STANHOPE: What, my department should be able to snap it fingers! Ms Tucker wants an answer in 35 minutes; stop the world and get Ms Tucker's answer. Ms Tucker approaches my office at 2 o'clock, graciously gives notice of a question she will be asking 30 minutes later, and then expresses some testiness that my department did not down tools on the basis that Ms Tucker had a question. What appalling arrogance!

Ms Tucker, as I indicated in my answer, I am more than happy to address the particular issue of the alleged disparity in the advice that you identified. Hopefully, I will have that answer before the close of question time. I will be more than happy to table it.

In relation to the second aspect of your question, I am not 100 per cent confident in terms of the particular situation that arose. I have some recollection, however, of the conservator, Dr Maxine Cooper, doing me the courtesy of letting me know that she proposed to announce here decision on this matter and that she was meeting with residents. I think that she indicated to those residents that she was happy to speak to them, but she had not at that stage had an opportunity to speak to her minister and, as a courtesy, she asked those residents whether they would mind waiting a day to give her the opportunity of speaking to her minister.

That was the basis, as I understand it, of that conversation. I think that it was simply a situation of Dr Cooper wishing to do me the courtesy of letting me know that she had a decision which she wished to discuss with residents and which she had not had an opportunity to discuss with me and she thought it appropriate that she should at least have an opportunity to discuss the matter with her minister before it became public. I think that that is probably quite reasonable.

Land development in Gungahlin

MR HARGREAVES: Mr Speaker, my question is to the minister for planning. Can the minister report to the Assembly on the government's land development pilot project in Gungahlin?

MR CORBELL: Mr Speaker, I am very pleased to advise on the success of the government's pilot land development project in Gungahlin. The Yerrabi Estate stage 2 in the Gungahlin Town Centre is being developed, as many members would be aware, as a pilot—

Mrs Dunne: At huge cost to the ACT taxpayer.

MR CORBELL: I knew Mrs Dunne couldn't resist.

MR SPEAKER: Order! Mrs Dunne has the floor.

MR CORBELL: Yerrabi 2 is a very important project for the government and, I am pleased to advise, is a project which is proceeding well. For members who are not familiar with it, the estate is bounded by Gundaroo Drive and Mirrabei Drive in Gungahlin, and adjoins the Yerrabi Pond district park and adventure playground. The estate is being developed by the Gungahlin Development Authority and involves a number of private sector partners to undertake the development work.

The design of the estate has been warmly welcomed by the Gungahlin community. In fact, it is an estate which has been very successful in light of the number of people wanting to purchase there.

All the land in the estate has been released by ballot. This is the first time since self-government that residential land of this type has been released by ballot, and it has been a very successful exercise. The first ballot attracted 129 registrations or 28 blocks; the second ballot attracted 99 registrations, or 36 blocks. I am pleased to advise that those two first ballots were completely successful, with all the land being sold.

One of the advantages of selling land by ballot, as well as allowing people to buy direct, is that people buy for a set price—they know what they are going to get if they are successful in the ballot. The land is valued at a particular price and, if you are successful in the ballot, you get to buy the land. That is a significant advantage.

I have heard many stories from people seeking to purchase homes in Gungahlin and other parts of the city, where they make an offer for a new home and then discover, down the track, that the price has gone up because the seller suddenly realises they can get more money. For first home buyers, or home buyers wanting to move into a new area, the attractiveness of being able to buy a block of land direct from the government at a set price gives them considerable certainty. They find that very attractive.

I am also pleased to advise that the Gungahlin Development Authority has received numerous inquiries from people wanting to know when the next land release will occur. When the GDA has advised them that there will be private sector land releases occurring where land can be purchased via a builder, they say, "No. I want to know when I can purchase land from the government direct." People are interested in it; there is a demand for it, and I think the response we have seen to date with Yerrabi 2 clearly highlights that.

The next stage to be brought on for sale— Yerrabi stage 2 —will consist of 90 blocks. The advertising starts on 22 March this year. An information evening was held last night. This will be an opportunity in particular for builders to buy direct from the government, because there are a number of townhouse sites. This is clearly not the sort of site which would normally be purchased by an individual home buyer or land buyer. So builders will be able to buy direct as well—and there is significant interest in these sites.

Quite frankly, today, the success of Yerrabi 2 is a strong endorsement of the government's move towards public land development activity. That move has, I think, highlighted the gap in the market, where people were unable to buy direct from the government, or faced increased costs because of the relationship between land developers and certain builders. It will cut out the middle man.

We have made land available direct to the public on a fair basis. In this process, I look forward to its continued rollout, to provide greater choice for homebuyers in the ACT, and indeed a greater return for the community on the asset it owns.

Economic discussion paper

MR STEFANIAK: My question is to Mr Quinlan. Can you advise the Assembly who was on the invitee list for yesterday's launch of the economic white paper? We have been advised that no representative from the government's business advisory board or any of the government's advisory boards were in attendance. Is it true that none of the important stakeholders such as the Chamber of Commerce or the Canberra Business Council were invited?

MR QUINLAN: Mr Stefaniak, if we are talking about a launch, there was not one. All there was were TV interviews that happened to be conducted outside at Regatta Point, as opposed to a press conference or whatever. It was just a case of giving some background—a little theatrical licence on the part of my media adviser—putting the broad expanse of this beautiful city behind us, only to find that I would have been a silhouette because the sun was behind me, so I had a couple of trees behind me. But that is life.

MR STEFANIAK: I ask a supplementary question. It seems that no-one was invited. For such an important event concerning what will eventually be the government's blueprint for business and a strong economy in the ACT, why was the invitee list so thin, and why did you do what you did, Mr Quinlan?

MR QUINLAN: We tried to get embargoed copies of the paper—discussion paper, by the way—out to stakeholders so that they knew about it. We made arrangements with the *Canberra Times*, which in recent times has been terrific in their willingness to advise people. Initially we had a tourism review and this time we had the discussion paper. The *Canberra Times* have already put the discussion paper out. It was in the paper on Monday morning. So the paper was probably launched pre-dawn, as it went out with the *Canberra Times*. There was television interest, with television looking for a different angle. That was facilitated during the morning.

Public Transport—Gungahlin

MRS CROSS: My question is to the Minister for Planning, Mr Corbell. Minister, Gungahlin is the most poorly serviced transport area of Canberra and, despite this, your government seems to have dropped the ball on the area of the greatest need. Can you please explain not only to this Assembly but also to the people of Gungahlin whether they are a priority of your government; and, if not, why does it appear that the inner-north of Canberra has now attracted your favour? In your answer, Minister, could you

please indicate whether you have done any polling as to from where the greater vote yield will be derived for the ALP; and can you confirm whether that polling is playing any role in the government's priorities for public transport.

MR CORBELL: I thank Mrs Cross for her question. I have to say that this government does not conduct matters of public policy as a result of opinion polls. The simple fact is that this government has not ignored the transport requirements of the Gungahlin community. Indeed, this government has put in place a range of very important measures to improve transport outcomes for people who live in Gungahlin. That includes, on the public transport side, significant investment in the single zone bus fare structure, which has seen an increase in the number of passenger boardings in Gungahlin of 22 per cent—a 22 per cent increase in the number of people boarding buses in Gungahlin as a result of the single zone fare structure; a very significant incentive and a more attractive way of encouraging people to get on a bus.

The previous government delivered a fare structure for residents of Palmerston, for example, where it cost more to catch a bus to Civic than it did to drive their car to Civic and pay for parking. That was the legacy of the previous Liberal government—I see that the members opposite are all very quiet now—when it came to bus fare structures for Gungahlin. It cost more to catch a bus than it did to drive a car. How sustainable was that?

Mr Smyth: Prove it.

MR CORBELL: Prove it? Well it costs eight bucks over there to pay for parking; quite frankly, it cost more than that to catch a bus. Now you pay $2.40 one way to get to Civic. So that is one measure that the government has introduced.

In relation to the issue of light rail, the government has said quite clearly that it is going to put all the options for improving public transport on the table. The government has not made any definitive decisions about whether or not light rail should even proceed but we do believe it has to be considered. It is interesting to observe that if I had not said anything about light rail at the forum last week, Mrs Cross would have asked me, "Why aren't you considering light rail? Why are you talking only about buses?" That is probably what Mrs Cross would have said if I had not raised the issue of light rail. This government is not afraid to put light rail back on the agenda. This government is not afraid to consider light rail as a potential transport mode for this city. To that end—

Mrs Cross: On a point of order, Mr Speaker. I did not ask Mr Corbell to talk about the zonal bus fare system. I did not ask Mr Corbell to tell me what he said at the forum, which in fact I attended after he spoke—I was not there when he spoke, and he probably would have noticed that if he had looked properly. I asked in my question why the inner-north all of a sudden has become a priority for the government rather than Gungahlin, when in fact the ALP went to the election stating that Gungahlin would be their first priority when transportation needs had to be addressed. That is what I asked Mr Corbell. I did not ask about the bus fare system.

MR SPEAKER: I do not think that is a point of order. Mr Corbell is still answering the question and I am sure he will take into account the points that you have raised.

MR CORBELL: Mr Speaker, Mrs Cross asked me about whether or not the government was ignoring the transport needs of Gungahlin residents. I am demonstrating that we are not.

The light rail option must be put back on the table. It is always interesting to hear from the Liberal Party on this point. They say, "Oh, we should be looking at this and we should be looking at that. Where is the vision, where is the view?" and all that sort of stuff. Who was the party that canned the last investigation into light rail? The Liberal Party. When Kate Carnell got elected in 1995 she canned it. That is what happened. That is the visionary view, that is the constructive approach from those opposite—can it; cut funding to ACTION; impose a three-tier bus fare which drives people away from the buses. That is the Liberal Party's view on transport policy.

This government is going to put these options on the table. The light rail network that I flagged in my speech last Thursday—

Mrs Dunne: In your stunt last week, yes.

MR CORBELL: You are just jealous, Mrs Dunne. The light rail proposal that I put in my speech last Thursday highlighted that one of the key considerations for light rail would have to be the number of trips it could generate. When you look at employment locations you will see that the single largest area of employment location in Canberra is the Civic-Parliamentary Triangle-Russell area. That is the single largest concentration.

Mr Smyth: But have you spoken to—

MR CORBELL: I do not know whether you have noticed, Mr Smyth, but Tuggeranong, Belconnen and Woden are not connected to each other. Have you noticed that? That is a bit funny, though, isn't it? Mr Speaker, that is the single largest concentration of jobs and in that respect it is possible that a light rail could work there.

The government is not ruling out light rail for Gungahlin—not at all. As I have said, the government has made no decision on timing or on implementation of this particular proposal. But the government is prepared to put issues on the table, we are prepared to explore them, and when we receive the finalised reports on the public transport futures feasibility study, the pricing study and the pricing elasticity study we will be in a position to determine the best possible response to addressing transport needs for this city. That is the government's considered view. It is a comprehensive policy approach—one which the previous government neglected for the past six years.

It is important that, as a government, we put issues on the table, that we raise them and that we get people thinking about them. I am amazed that the Liberal Party—perhaps it is because they are so bereft of ideas of their own—is not prepared to welcome a debate about light rail; that they are not prepared to welcome a discussion about how to best improve transport in our city. No, we get just a straight reaction from Vicki Dunne, "Oh, that will never happen." That may be Vicki Dunne's view of the world but we are interested in making these things happen and having a good discussion about this as a starting point. We are prepared to put these issues on the table; we are prepared to discuss them; it is just a pity that some other members of the Assembly are not prepared to have that debate.

MRS CROSS: Mr Speaker, this is a wonderful beginning to a sitting week! I have a supplementary question. I thank the Minister for his answer but I am not quite sure he understands. Minister, in the first instance, I am not a Liberal but an independent. So an independent asked you this question.

MR SPEAKER: Just get to the supplementary question please, Mrs Cross.

MRS CROSS: I will get to it. Minister, what is it exactly that you as a minister are doing to ensure that the future transport needs of Gungahlin are indeed a priority for your government and are not taking a backseat to the inner-north of Canberra?

MR CORBELL: The suggestion in the question is simply false, Mr Speaker. It might make good political rhetoric but it is simply not the case. As I have already indicated to Mrs Cross in my previous answer, the government has increased bus patronage in terms of the number of boardings by 22 per cent since the introduction of the single zone bus fare structure.

Mrs Cross: You have just come out saying that the inner-north is going to be your focus for light rail.

MR CORBELL: I do not know whether your heard my answer, Mrs Cross, but I have just informed you—let me spell it out—that the government has not made any decisions about light rail. We have not decided on a route, we have not decided on an alignment, we have not even decided whether or not it should happen. But what we have decided to do is make it clear, first, that all the technologies are on the table; and secondly, the community needs to have discussion about this. That is the approach we are adopting. There are benefits in an inner-city light rail. Clearly there are benefits based on the initial—and I have to stress "initial"—analysis because of the employment location, because of the number of trips that that employment location can generate. But it is not the be all and the end all. The government does not for a moment believe that light rail is the be all and the end all.

The suggestion, of course, is that Gungahlin is poorly served by public transport when in fact there are over 75 route services a day from all the Gungahlin suburbs to Civic and a significant number of other services to Belconnen, Russell and a range of other locations. So public transport is improving in Gungahlin, and the fare structure is more attractive. This government has put an additional 200 services into Gungahlin since we came to office. That is the priority we give to Gungahlin—an additional 200 services and a flat fare structure which has seen boardings increase by 22 per cent. If Mrs Cross thinks that we are not emphasising Gungahlin, I would ask her to go and look at those facts for a start.

Birrigai Outdoor Education Centre—reconstruction

MR CORNWELL: My question is to the Minister for Education. Minister, will you advise the Assembly about when the government will commence the reconstruction of the Birrigai Outdoor Education Centre, as well as confirm the future of important education programs undertaken at Birrigai, which I understand benefit around 10,000 primary school children each year?

MS GALLAGHER: Thank you for the question, Mr Cornwell. This issue of the timing of the work at Birrigai is still unclear. It is a matter of insurance. It was insured. The department and I also want to have some broad consultations about how we rebuild Birrigai. It was an older building, so I think there are great opportunities in terms of future design for Birrigai and for the involvement of the community, our indigenous people and our young people in the process. I think that Birrigai, and the rebuilding of Birrigai, will become a very important part of the recovery process in Canberra.

You are right—it has been a very important part of educational opportunities for many young people in the ACT. I certainly remember it fondly after attending school camps and musical camps there, myself, as a student—apart from the emus that came into the sleeping areas, which I didn't like very much.

There has certainly been a rallying of the broader community—including the education union and other stakeholders—all of whom want to get together to put forward some ideas for Birrigai. We have to pull that together and work out a plan. It will have to be a longer term plan. There is also the issue of the location of Birrigai and whether there is a better place for Birrigai in the national park. Discussions about that still have to be held.

In the short term, the question is where do we have outdoor educational opportunities for young people from now on, when it is urgently required. The department is looking at a couple of options in relation to that, and at how we can get some camps going so that the young people who were booked for those camps at Birrigai do not miss out this year.

MR CORNWELL: There is a supplementary question, which the minister has partly answered. Is the immediate future of the programs that are normally conducted at Birrigai under examination at the moment?

MS GALLAGHER: Yes, that is right, Mr Cornwell. There are a couple of sites being examined, such as the Dairy Flat farm and Outward Bound at Tharwa, but discussions about those are ongoing. Again, there is broad community support, and support from the department, for getting things moving as soon as we can, while we all work together for the longer term, for Birrigai.

Birrigai Outdoor Education Centre—relocation

MR PRATT: Thank you, Mr Speaker. My question is to the Minister for Education and follows on from the other question about outdoor education. Minister, can you confirm that Outward Bound Australia has offered to house all staff and programs from Birrigai at its location at Tharwa? Can you advise the Assembly, if you are aware of any delays that would prevent the government immediately accepting this offer?

MS GALLAGHER: I cannot confirm the exact nature of the offer made by Outward Bound. That certainly has not been brought to my attention, if that organisation has made such an offer. I can confirm that the department is having discussions about, and looking at options for, the best way to provide outdoor education opportunities to young people. There is certainly no intention to delay those decisions.

As to the particulars of the discussions that have been going on between Outward Bound and the department, I am not privy to those.

MR PRATT: Minister, given that there have been some discussions between the department and Outward Bound Australia, and there has been talk of the department taking three months to draft a memorandum of understanding, surely this indicates that there will be 3,000 primary school students denied an opportunity to do their outdoor education, not to mention the fact that 32—

MR SPEAKER: Are you going to come to the supplementary question?

MR PRATT: This is the question. Thirty-two staff of Birrigai have been let go.

MR SPEAKER: It sounds like a pretty long preamble to me. I think you should—

MR PRATT: It started with a question, Mr Speaker: "Given that . . ."

Mr Hargreaves: Given page 45 in the *Canberra Times*, read verbatim?

MR SPEAKER: Just come to the supplementary question. Do you have a question you want to ask?

MR PRATT: Minister, do I need to repeat that?

Ms Gallagher: I think I have it.

MR SPEAKER: Do you?

MR PRATT: I think she has.

Mr Corbell: No thanks to you, Mr Pratt.

MR SPEAKER: Order, everybody! It was a bit of guesswork on the minister's part, I think.

MS GALLAGHER: I will say it again: the intention is certainly to get the short-term camps replaced as soon as possible. If the advice is that it will take some time to negotiate a memorandum of understanding between the department and whoever it decides to negotiate with—and I do not think the decision has been made about where Birrigai should go in the short term—then I imagine there will be very good reasons for that. Outdoor education is about taking our children into an environment where there are more risks and more opportunities than usual. From my point of view, the department is taking extreme care to make sure all those issues are addressed and that, when the camps do get up and running, the safety of our young people and the teachers is being adequately looked after in the MOU.

Social plan

MS DUNDAS: My question is for the Chief Minister. Can you please tell the Assembly how far the social plan has progressed? Who has been consulted on its content? When will it be released to the public?

MR STANHOPE: The social plan is progressing, albeit perhaps not as rapidly as one in an ideal world would hope. It is being managed and developed by officers of the policy branch in the Chief Minister's Department. A social framework has been developed. At this stage I cannot give details of a formal consultative process or mechanism. It is my intention and the department's intention, however, to consult broadly and inclusively on the development of the social plan.

As you are aware, the government's proposal is to develop a plan for Canberra into the future. The Canberra plan will comprise detailed work being undertaken by the Chief Minister's Department through the Treasury and through PALM. The essential constituent aspects of the Canberra plan will be the development of a spatial plan, a bird's-eye view of Canberra into the future, a plan for how in the next 20 or 25 years we propose that the city and its infrastructure develop.

Members would be aware that my colleague Simon Corbell, through PALM, will shortly be initiating additional work on the spatial plan proposals for the areas of Stromlo Forest adjacent to Weston Creek. This is a very important task that the people of Canberra have a very real interest in, having regard to the recreational value they have found in using Stromlo Forest. Issues raised in the economic white paper about potential urban development there are particularly important.

The constituent parts of the Canberra plan are the social plan, the economic plan or economic white paper, and the spatial plan, bringing together the social, environmental and economic aspects of the future of the ACT. This is a major piece of work. It is the first time ever a government in the ACT has sought to develop a vision for the future of Canberra in all its aspects. It is not something we simply drop on the table.

I saw some remarkable comments from some members of the business community on the economic white paper draft yesterday. I think they were echoed by the Liberal Party. At times one cannot tell the difference between the two. They said what a pity it was that the economic white paper had not been concluded so that budget bids could be made in relation to some aspects of the new vision. It was never intended to be that. This is not a budget consultation document. It is a document about how to take this community forward, as is the social plan. It is a way of looking at things we have never looked at before.

In the social plan, for instance, we are well advanced in consideration of an analysis of some of the constituent communities in the ACT. We are looking to better identify the nature, for instance, of the indigenous community. One of the things we sadly lack in the ACT is a deep understanding of the size, nature, location and other essential aspects that are the demographic of indigenous people in the ACT.

We know some of the indicators of the welfare of indigenous people. The full range of health indicators show that indigenous people in the ACT suffer the same disadvantages as indigenous people around Australia. One enduring shame that Canberra suffers is that life expectancy of an Aboriginal person in the ACT is 20 to 25 years less than that of a non-indigenous person. As I have said, if I was a black Aboriginal man, I would be dead. These are some of the issues we are seeking to get to the bottom of in the work we are doing in developing a social plan.

We are doing the work. It is hard work. We are seeking to do a full analysis and study of our indigenous population, of people living in poverty. In the next day of so I hope to be able to release a significant AIHW report the Chief Minister's department commissioned on a whole range of issues around disadvantage in the ACT. It goes to the issues that are relevant in coming to a full understanding of exactly what goes on in this town—the information we do not have and the analyses we need to do but have never done.

In 13 years of self-government we have never attempted to develop a social plan. We have never attempted to develop an industry or economic strategy such as that that Mr Quinlan is pursuing through the economic white paper. We have never had one. That is why I am so intrigued by some of the comments, particularly those from Chris Peters and some of his ilk. There has never been an industry strategy in the ACT. Yet Chris Peters makes the absolutely inane comment: "Too little too late." I do not recall him once speaking through seven years of Liberal government about the fact that there was not one and there was no attempt at developing one.

Mr Smyth: We had numerous strategies all running at the same time.

MR STANHOPE: The Liberal Party's industry plan was "Feel the Power of Canberra", or it was the $10 million Impulse grant which left us with an empty heavy engineering facility at the airport that can be used for nothing but a subsidiary stadium for the Capitals. There is nothing there. We got nothing from the heavy engineering facility that your industry strategy developed with your $10 million grant to Impulse. The major expenditure on industry development in the ACT since self-government was your $10 million to Impulse—and we got zip for it. That was not an industry strategy. That was a knee-jerk response of getting the cheque book out and writing a cheque for 10 million bucks.

Mr Stefaniak: Seventeen thousand new jobs.

MR STANHOPE: Seventeen thousand new jobs through Impulse? It went phut! We got nothing out of that $10 million. Fujitsu was another Liberal Party industry strategy. What did you give Fujitsu? You refurbished half the Health building.

Ms Dundas: I take a point of order, Mr Speaker. I did not ask for an economic history lesson on the ACT. I asked about the social plan. Can the Chief Minister please refer to my question?

MR STANHOPE: The social plan is an integral part of the Canberra plan. I was talking about the Canberra plan. You have to look at them as a package. The social plan is a part of the Canberra plan. The economic white paper is a part of the Canberra plan. The spatial plan is a part of the Canberra plan. You cannot separate bits of it out.

We are working hard at it. We will consult broadly. We will have a major draft available for the middle of the year. The latest announcement is that we hope to finish the work by the end of the year.

MS DUNDAS: I ask a supplementary question. Since it is essential that economic growth benefit those in greatest need, why has progress on the social plan lagged behind progress on both the economic white paper and the spatial plan, which in comparison are both progressing quite rapidly?

MR STANHOPE: If the question was about the social plan and not the economic white paper or the spatial plan, can the supplementary question be about those matters, Mr Speaker?

This is absolutely puerile. You have a government that is concerned about the future. You have a government that is determined to act strategically. You have a government with a vision. You have a government that is looking to the future. Yet we have this juvenile pecking from the old crossbench—all care, no responsibility. What a classic—all care, no responsibility, pecking away at a government that is doing the first strategic work that has ever been done by a government since self-government.

Economic discussion paper

MS MacDONALD: Minister, following the release of *Building Canberra's economy a discussion paper for the economic white paper*, can you inform the Assembly of the process that was undertaken by the government to compile the discussion paper, and what actions were taken to gather information from the community in general and the business community in particular?

MR QUINLAN: It is important to inform the house that, yes, there was extensive consultation before the preparation of the discussion paper. Specifically, quite a number of organisations were written to and were met with by officers. We also had some briefings, which I was involved in.

We wrote to a number of organisations—the main stakeholders. We wrote to the Chamber of Commerce, ACOSS, Australian Business Ltd, the AHA, Business Canberra, the University of Canberra, the ANU, the Canberra Business Council, CREEDA, the Housing Industry Association, our own knowledge-based economy committee, the small business committee, the Motor Trades Association, the Property Council and the Trades and Labour Council, most of whom made an effort to respond.

The letter that they responded to suggested that the government would like to work closely with peak business, labour and planning organisations. To this end, we offered the opportunity to contribute advice to the white paper, outlining issues seen as being of great relevance, where possible analysis and data support for action might be needed. We would encourage people to think widely, beyond traditional industry policy, et cetera.

It is important to note that most of those people did respond. To give just one specific example, the Canberra Business Council responded with 39 suggestions, some of which, as you would expect, were to give business a little more there and a little bit more there.

But let me say that quite a number of those suggestions made by the Canberra Business Council have now been embodied in the proposals that were included in the discussion paper—which was the process we were about.

I have got to put on record that a notable absentee in responding to that letter was the ACT & Region Chamber of Commerce and Industry, the chief executive of which met with officers of Business ACT on 14 May 2002 and extended the personal invitation for a written submission. No written submission emerged.

Bill, this is the question you should have asked if you wanted a bit of ginger. You asked about the launch yesterday and who was invited. We said that there wasn't a launch, so there wasn't an invitation list. But guess who turned up? Mr Peters of the Chamber of Commerce, whom—I cannot hide it, I have to confess—I described during the last Assembly as a serial government apologist because of his persistent "Liberal government, right or wrong; Kate Carnell, right or wrong," no matter what happened. Mr Peters was first at it.

The previous government was caught out sending press releases to Mr Peters before they went to the media so that Mr Peters could put out his press release saying how good that press release was. The disappointing part of this was that Mr Peters found his way to the media event yesterday—just the interview site—was able to give an interview and was able to bag out the discussion paper. Here is a guy who was invited to contribute by letter, invited to contribute in person and who contributed zilch—but he now knows that the discussion paper is seriously deficient. I really look forward to the new Mr Peters.

I want to make it clear that I have a great deal of respect for the Chamber of Commerce and many of the members, including its chairman. But it seems that Mr Peters has immediate response rights without reference to the Chamber of Commerce. It is seriously disappointing that we have a situation where the chamber cannot respond.

Mr Smyth: The paper is disappointing.

MR QUINLAN: I just figure that the bagging rights belong to either those who made a positive contribution or those who were ignored totally. But Mr Peters fits into neither of those classes. He was too lazy or did not know enough to contribute, but he knows enough to tell you when it is wrong. From Mr Peters' perspective, Canberra's cup is half empty.

MS MacDONALD: Mr Speaker, I have a supplementary question. Minister, what is the process from this point in the lead-up to the final paper, and how will these groups be included in the process? Will they be able to participate in the future?

MR QUINLAN: Thank you, Ms MacDonald. I certainly hope so. There are a number of people, including the aforementioned gentleman, who have now put themselves in the position where they are duty bound to contribute positively to this process.

Mr Smyth: It's your white paper. It's your ideas.

MR QUINLAN: No it's not. It is the paper we are putting together in consultation—

Mr Smyth: Where are your ideas?

Mrs Burke: "We don't have any, so we'll ask people."

MR QUINLAN: Are you saying we should not have consulted?

MR SPEAKER: Order! Resume your seat, Mr Quinlan. I won't stand any more of these interjections, and it is no more in order to respond to them. So answer the question and we will move on.

MR QUINLAN: To repeat myself, Mr Speaker, it is now incumbent on those, in particular the critics, to come forward. It is not a case of their saying it is badly written; they are saying it has not got enough in it. I expect the Chamber of Commerce, and others, to come forward with a positive contribution to it.

While I am on my feet, Mr Speaker, may I refer back to the question on the timing of the white paper. The one qualification I would put on my previous answer is that I have to dovetail with the Canberra plan, so I have got some time constraints.

Education—class sizes

MRS BURKE: Mr Speaker, my question is to the minister for education. Minister, can you confirm that the ACT government is still committed to reducing class sizes, in order to improve student-teacher contact times? And can you confirm that you will not be taking any decisions that would violate these principles?

MS GALLAGHER: The answer is yes.

MRS BURKE: Mr Speaker, I have a supplementary question. Minister, given your response, will you explain why schools such as Farrer Primary School are advising parents that classes are to be amalgamated, including the introduction of composite classes?

MS GALLAGHER: The reduction in classes sizes K-3 initiative is continuing through the schools. We have employed 86 new teachers this year, to meet the needs of the additional classes. In relation to Farrer, I am not privy to what is going on in that school. What you have alluded to, I can undertake to find out. It is my understanding that composite classes are not that unusual in schools; that they don't often have additional teachers and that the number of children can still be met through the reduction in class sizes initiative. However, I would need to look at the detail of what you are raising.

Ambulance dispatch system

MRS DUNNE: Mr Speaker, my question is to the minister for emergency services, Mr Wood. Minister, could you update the Assembly on the progress of the implementation of the new ambulance dispatch system?

MR WOOD: I will report to you in detail later. I do not have the details with me. I will get back to you on them.

MRS DUNNE: Mr Speaker, I have a supplementary question. When you get back to us, minister, can you enlighten the Assembly on whether the ambulance dispatch system is compatible with the police dispatch system?

MR WOOD: I would not think so. The police system tends to stand alone—I think that is the way you left it. That is where it was when you left.

Mr Smyth: No—that is not true.

MR WOOD: My understanding is that it is not compatible, certainly with other ESPs. I will check that detail, Mr Smyth. You seem adamant, so I will check that detail for you.

MR STANHOPE: I ask that further questions be placed on notice paper.

MR STEFANIAK (3.34): Mr Speaker, during the last sittings I asked Ms Gallagher a question in relation to WorkCover, which she took on notice. I would like to remind her of that and would appreciate an answer as soon as possible.

Papers
Auditor-General's Report

Mr Speaker presented the following paper:

> Auditor-General Act – Auditor-General's Report – No. 1 of 2003 – *Effectiveness of Annual Reporting*, dated 4 March 2003.

MR WOOD (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for the Arts and Heritage and Minister for Police and Emergency Services) (3.34): I ask leave to move a motion authorising that report.

Leave granted.

MR WOOD: I move:

> That the Assembly authorises publication of the Auditor-General's report No 1 of 2003.

Question resolved in the affirmative.

Executive contracts

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment): 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:
Lincoln Hawkins, dated 30 January 2003.
Anne Thomas, dated 14 February 2003.
Barbara Baikie, dated 12 February 2003.
Short term contracts:
George Tomlins, dated 14 February 2003.
Barbara Baikie, dated 12 February 2003.
Geoff Keogh, dated 18 February 2003.
Hamish McNulty, dated 20 February 2003.
Peter Gwilt, dated 10 February 2003.
Francis Duggan, dated 14 February 2003.
Schedule D variations:
Gordon Lee Koo, dated 20 February 2003.
Peter Gordon, dated 10 February 2003.
Lucy Bitmead, dated 12 February 2003.
Geoff Keogh, dated 10 and 11 February 2003.
Mark Kwiatkowski, dated 12 February 2003.
Christine Healy, dated 12 February 2003.
Stephen Ryan, dated 12 and 14 February 2003.
Performance agreements:
Lincoln Hawkins, dated 9 January 2003.
Gordon Davidson, dated 9 January 2003.
Julie McKinnon, dated 21 and 22 January 2003.
Lucy Bitmead, dated 14 January 2003.
Maxine Cooper, dated 9 January 2003.
Sue Ross, dated 9 January 2003.
John Thwaite, dated 11 December 2002.
Allan Eggins, dated 25 November 2002 and 9 January 2003.
Dorte Ekelund, dated 9 January 2003.
Tom Elliott, dated 27 November 2002 and 9 January 2003.
Harriet Elvin, dated 2 December 2002 and 9 January 2003.
Mandy Hillson, dated November 2002 and 9 January 2003.
Richard Johnston, dated 5 and 9 October 2002.
Hamish McNulty, dated 1 and 29 November 2002
Tony Bartlett, dated 7 November 2002 and 9 January 2003.
Elizabeth Fowler, dated 13 November 2002 and 9 January 2003.
Martin Hehir, dated 22 and 24 January 2003.
John Meyer, dated 7 November 2002 and 9 January 2003.
Alan Phillips, dated 7 November 2002 and 9 January 2003.
Stephen Ryan, dated 2 December 2002 –

I ask leave to make a statement in relation to the contracts.

Leave granted.

MR STANHOPE: Mr Speaker, I present another set of executive contracts. These documents are tabled in accordance with section 31A and 79 of the Public Sector Management Act, which require the tabling of all executive contracts and contract variations. Contracts were previously tabled on 18 February. Today I present three long-term contracts, six short-term contracts and 27 contract variations. The details of the contracts will be circulated to members.

Nominal Defendant (ACT)—2002 Annual Report

Mr Wood presented the following paper:

> Road Transport (General) Act, pursuant to section 216—The Nominal Defendant (Australian Capital Territory) 2002 Annual Report, dated 13 February 2003.

Petition—out of order

Mr Wood, presented the following paper:

> **Petition—out of order**
> Belconnen—Maintenance of youth services by the Warehouse club—Mr Wood (35 citizens).

Real estate industry
Discussion of matter of public importance

MR SPEAKER: I have received a letter from Mr Hargreaves proposing that a matter of public importance be submitted to the Assembly, namely:

> The unethical practice of 'gazumping' in the real estate industry, especially in light of the current housing situation.

MR HARGREAVES (3.37): Mr Speaker, I raised in an adjournment debate in the last Assembly, I think—it may have been early in this one—the immoral practice of gazumping. Today I want to draw the 5th Assembly's attention to the problem. Gazumping is driven by an ACT real estate market experiencing significant growth fuelled by high demand and a low supply of residential properties.

Demand for ACT properties has risen, prices have risen and the number of consumers being gazumped is also on the rise. Gazumping is not illegal in the ACT, nor in any other jurisdiction, but for many consumers it is a highly immoral and deceitful practice that causes significant distress and financial loss for buyers. Trust is an important element in every relationship, including that between a buyer and a seller. When a seller dishonours their promise to sell, all trust is lost.

Gazumping is not where a seller rejects a buyer's offer to buy a house; gazumping is where a seller breaks their promise to sell the house to the buyer after they have accepted the buyer's offer. A buyer cannot be gazumped unless the seller has accepted the buyer's offer and that seller subsequently accepts a higher offer from another buyer. It is, in effect, auction by stealth.

In the ACT gazumping occurs because of the time gap between the verbal acceptance of the offer by the seller and the written contract being signed by both parties. It can be anything up to two or three weeks before a binding written agreement is made and, within that period, there is a wide window of opportunity for higher offers to be made to the seller.

ACT buyers of property often believe that a seller is legally, or ethically, bound once a seller accepts an offer. Sometimes buyers pay a 1 per cent holding deposit under the misapprehension that this secures them the right to buy the property. Buyers then proceed to spend money engaging a solicitor, undertaking searches and obtaining finance after their offer has been accepted but before written contracts are exchanged.

The fact remains that, until a contract is signed and exchanged by both parties, a seller can accept further higher offers. This is when a buyer can be gazumped, leaving them without the property they believe they have purchased and out of pocket for the expenses they have paid.

Agreements to buy and sell land are treated differently from any other type of agreement. If it was a contract for goods, an oral agreement would be sufficient. Not so for land. Agreements to buy and sell land are governed by the Statute of Frauds, a centuries old doctrine that requires a contract for land to be in writing for it to be binding.

The solution is not to do away with contracts in writing, because this requirement gives certainty to contracts for what are significant consumer financial transactions, and written contracts are essential to reducing expensive and drawn-out litigation over alleged oral agreements about property that cannot be substantiated.

Gazumping is a problem for consumers for a number of reasons: buyers lose the property they thought they had secured; buyers feel cheated and deceived; buyers lose the money they spent on searches, solicitors and bank fees; and gazumping creates an environment of mistrust between buyers and sellers in the property market.

As an aside, the reputation of any profession can be determined by the lack of honour perpetrated by a few of them. Real estate agents in this town are among the most honourable people that we have within the work force, but their reputation suffers because some people operate without any semblance of honour at all.

Gazumping can also be a risky business for sellers. Every time a seller engages in gazumping, they run the risk of losing the second buyer as well as the first. If the second buyer evaporates and the seller is forced to go back to the first buyer, it is unlikely that the first buyer will trust the seller and take the risk of being gazumped again. Sellers may also become frustrated with the length of time the property remains on the market, particularly if no new buyers appear.

A buyer who is gazumped loses more than just the money paid out in searches and solicitors' fees. Gazumped buyers have told the government and the Real Estate Institute that they are angry because they feel they have been deceived. A promise was made by the seller—a deal was struck—and then that promise was broken. Buyers in the ACT expect sellers to stand by their word.

There is nothing wrong with a seller seeking to make the best deal they can for the sale of their property. Their right to obtain the highest possible price for their property should not be interfered with, nor should their right to choose the buyer to whom they wish to sell. I understand that the government is working with stakeholders to develop a solution that balances the interests of both buyers and sellers. To achieve an effective solution it

has examined the conveyancing processes of other jurisdictions to see how they have dealt with this problem.

Gazumping rarely occurs in Queensland, South Australia or Western Australia. Stakeholders in these jurisdictions tell us that gazumping never happens because the window of opportunity for gazumping to occur does not exist. This is because contracts are formed in a very different way in these jurisdictions. Everything is done in writing.

When a buyer wishes to make an offer, they are given a copy of the contract by the seller's real estate agent. The buyer writes the details and the amount of their offer on the contract. The contract is then forwarded to the seller who may accept or reject the offer. To accept the offer the seller signs the contract, unlike in the ACT where the signing of the contract does not take place until some time after the oral acceptance of the offer.

In Queensland, South Australia and Western Australia there is no process of exchange. Contracts are binding once the seller accepts the offer by signing the contract. There is no time gap between the acceptance of the offer and the formation of the binding contract. The events occur simultaneously. In other words, there is no opportunity for gazumping to occur. This conforms with the offer and acceptance philosophy under contract law. A gentleman's handshake is not recognised in contract law in terms of land.

In Victoria, approximately 90 per cent of properties are sold by auction. Gazumping does not occur here, because the window of opportunity does not exist. At auction the contract is formed at the fall of the hammer. Once again, there is no wait in weeks for the exchange of contracts to occur.

New South Wales passed legislation in an attempt to eliminate or at least reduce the incidence of gazumping. This attempt failed because the legislative amendments left open the window of opportunity. We should not make the same mistake. Without closing this window no solution will achieve an end to gazumping.

A buyer can have no certainty about that purchase if they know that, for the two to three weeks following verbal acceptance of their offer—until contracts are exchanged—the seller can renege on their promise to sell. In a property market where prices are rising and demand is outstripping supply, one thing is certain: the incidence of gazumping will increase until the window of opportunity is closed.

I am advised that the government's consultation with stakeholders is progressing well, and a proposal to rid the ACT market of gazumping will soon be put forward for the Assembly's consideration and support. I look forward to that. I have been on this campaign trail against gazumping ever since my wife burst into tears and spent a week in bed because she missed out on the property that she loved.

I probably see one of the more regular occurrences when I sit on shopping centre stalls. For other members' benefit, shopping centre stalls are where you stand outside a shop at a little card table and people come up and talk to you. I know there are some members that are strangers to that process, but that is how it works.

People come up to me and say they are really annoyed—usually with words from the great Australian vernacular—abusing the heck out of the Real Estate Institute. It is not the institute's fault. It is because there are crooks in the marketplace—not crooks in the legal sense but crooks in the moral sense. To quote a very famous Labor prime minister, they are "scumbags".

As a prominent jurist once said, verbal agreements are not worth the paper they are written on. Also, one of the fellows who was advising me early on in my political career said to me, talking about campaign strategy, "If you can't write it down, it doesn't exist." Those are wise words as well.

I hope the government will come forward with some mechanism whereby, as soon as the agreement is reached between buyer and seller, it is committed to paper in a binding contract. We need to have written contracts signed off as early in the process as possible.

On the discovery of gazumping, my approach to this immoral practice was initially to propose sanctions: suspending real estate licences—to provide a disincentive for the firms and pass that disincentive on to their operators and contract operators—and fining the seller the equivalent amount of the difference in price achieved by the gazumping so that, if people wanted to indulge in gazumping they would contribute to the ACT's Treasury coffers, once they had been proven to have gazumped.

However, we should bring people willingly to the altar of moral compliance by ensuring that any agreement reached is committed to writing in an enforceable contract as part of the initial agreement. It is far better to have people say, "Let's do it because it is the right thing to do," than have to beat them over the head with a big stick. The government is introducing a mechanism that will bring these people willingly to the elimination of this immoral practice. However, these people ought to be aware that, if this process does not work, somebody will take a big stick out of their pocket and whack them with it. I will be watching to see just what happens.

The reason I bring this on as a matter of public importance is that the marketplace at the moment is a seller's paradise. We have a shortage of houses, and the buyer is at the mercy of unscrupulous practices. Now is a good time to put those unscrupulous practices to the sword. I hope that all elements of the Assembly contribute to this debate and put themselves behind the elimination of this practice.

If we must have any kind of argument at all, let us argue around the fringes. But let us all commit ourselves to the elimination of this practice. It is a heinous practice. It creates an enormous amount of anger, disappointment, pain and an enormous amount of cost—unnecessary cost—for people.

I urge the Assembly to come up with a collective approach to its elimination. I would like to see that, when the government brings down its mechanism, we look at it and ask ourselves only one question—not, "What political benefit can I get out of this?" but, "Is this going to work?" After all, we are doing what the people of the ACT put us here for: to protect them and give them the best opportunity to realise their dreams. If the great Australian dream is to own a home, imagine how it is to have that dream shattered. It is

incumbent upon us all to get behind any push to eliminate this rotten practice and put it to the sword once and for all.

MS DUNDAS (3.51): Mr Speaker, gazumping goes against the Australian sense of fairness. Gazumping becomes common in a rising market, and house prices in most of Australia's capital cities, including Canberra, have been rising quite dramatically. State governments around Australia have been made aware of the distress of home buyers gazumped at auction and have introduced legislation to outlaw gazumping. New South Wales and Victoria have led the way in this area.

Most people believe that a person who makes the winning bid at an auction is immediately bound to a contract to purchase the property they bid on. Therefore, it seems unjust to buyers that the vendor is able to repudiate a contract when a buyer believes they will forfeit their 10 per cent deposit if they repudiate the contract.

In the ACT there is no binding agreement of sale until contracts are exchanged, which can take several days. This provides a window for gazumping to occur. New South Wales has overcome this problem by legislating that a contract is concluded at the point when the hammer falls at auction.

The ACT Democrats strongly support the regulation of gazumping, so that the law will reflect community belief about right and wrong in the area of property sales. It appears that such a change is supported by most, if not all, members of the Assembly, with both Labor and Liberal committing to reform of this area in the past.

The Stanhope government committed to a review of gazumping last June, which I presume must have progressed substantially since Mr Hargreaves initiated this discussion on a matter of public importance. I hope legislative reform in that review is concluded sooner rather than later and we do not find ourselves in this position next year.

But the heart of the problem is that housing has become unaffordable for a large section of our community. This is causing homelessness for those at the lower end of the economic ladder and severe stress among intending home buyers who are currently in the rental market.

Gazumping reform will relieve some stress for home buyers, but it will not make a substantial impact on Canberra's housing shortage. It seems to me that outlawing gazumping is a relatively straightforward change, and time and effort would be better spent on working out how to increase the total supply of affordable housing.

I hope that the proposed rental guarantee and rental bond schemes are being given the highest priority by this government, so that more homeless and inadequately housed people can access private rental accommodation. I hope the government is also tackling improved pathways—from public housing to private rental housing and from private rental to home ownership.

Most importantly, I have been calling for members to create diverse housing for incorporation into our planning framework. The affordable housing task force report, released late last year, has strongly supported redevelopment in our suburbs. But in reality, all the redevelopment has been at the high cost end. We need to urgently

investigate reform of our betterment tax system to make it financially attractive for developers to build affordable housing.

In the private rental market, the housing affordability task force reported on the trends of affordability of new private rentals in the ACT, and every district has shown a strong decline in people being able to access affordable housing over the past five years. We have seen these declines most evidently in our outlying areas, and these areas have changed from being among the most affordable in 1998 to among the least affordable in 2002.

These are quite strong indicators that we need to look seriously at how the private rental market is working and how the public housing market is working, as well as focusing on how we can improve the laws relating to the buying and selling of houses, particularly in the area of gazumping. I hope that the government will not be content with a token measure of outlawing gazumping, when this is only the tip of the iceberg that is our affordable housing crisis.

MR STEFANIAK (3.55): Mr Speaker, I am interested in why Mr Hargreaves is bringing this on now, given that the government's paper has been out since June of last year. Nevertheless, I think it is timely. It is a very serious problem, and there are a number of possible solutions. I look forward to seeing what the government is going to come down with.

Mr Hargreaves is quite right to say that a shake of the hand is simply not enough, even though a lot of people think it is. Even a note from the real estate agent saying the property has been sold is not enough. Here, until a contract is actually signed and exchanged, it is not legally binding.

Gazumping can occur not only in a market such as this. This is a more typical time, when there aren't many properties on the market, there are lots of buyers and people are very keen to get in—even more so now because of the fires when a lot of people who have been burnt out are looking to either rebuild or, in some, instances, buy somewhere else. This is a timely discussion. Property is in short supply, and this is a classic time when gazumping can occur.

My office gets a number of calls, on a not irregular basis, from people who are very concerned about the practice of gazumping. It is something that we, as legislators, need to sort out and sort out quickly.

In a market like this, it is of detriment to the buyer and a benefit to the seller. Conversely—and we have seen in Canberra the bust times as well as the boom times, when people are very keen to try to get rid of their property and there are just no buyers there—it can be very difficult for a seller. Indeed, the reverse could happen, whereby a seller might think they have finally got a contract and then the buyer pulls out. So it can occur there as well. But when most people think of gazumping, they think of a buyer being gazumped. It applies both ways.

It even applies in relation to rent. I have heard of people being gazumped in rent. They think they have got a deal, going into a rental accommodation for, say, $240 a week.

They think that is the case, and they suddenly find that someone has offered to pay $280 and the landlord says, "You beauty! I'll take that." Then their expectations are dashed, and there is that first, traumatic aspect of it when your dream home suddenly goes out the window.

Then there is the cost, which is a very significant issue. It is quite common for people being gazumped to have taken out a couple of searches, employed a solicitor, had a builder check over the property and incurred some bank fees. They would be up for about $1,000 before they sneeze. Then they are gazumped, and they are out of pocket. At this stage, there is no way they can get that back.

In other states, there are different laws. New South Wales has a cooling-off period in its contract. It does not actually stop gazumping. In fact, there is a practice in that state now where the vendor's solicitor might offer a couple of contracts for the same price and whoever gets in first gets the contract. That is not a very satisfactory situation but, again, it is a case of a lot of demand and very little supply. And in that five-day cooling-off period, too, there are some potential problems.

Mr Hargreaves says it is different in South Australia and Queensland. If we went down that track, it would probably require a fairly substantial rewrite of the standard contract of sale used in the ACT. That may or may not be a bad thing, but I recall from discussions with various bodies, that there may be some promise in that. We need to look at it fairly carefully.

If there were to be any alteration to the contract of sale, it would have to ensure that, if something was wrong with the property—something the buyer could not genuinely anticipate—the buyer could, after signing the contract, get out of that contract in a reasonable sort of way. That is pretty well standard with most contracts, but I think it would be essential, if, once the contract is signed, that is basically it.

That is one of the benefits—if you can call it a benefit—of making inquiries before you formally exchange contracts, which is the point everything starts happening from. That is the point I raise there. The department has done some work on this, and there have been concerns in relation to what would be a very substantial rewrite.

Another possibility that is certainly worth looking at was raised by the former head of the Real Estate Institute and also the Law Society. It has considerable merit because it ensures that no-one is wrongfully out of pocket. If someone is gazumped and they have suffered financial loss—they have spent the $1,000 I have mentioned—the seller has to reimburse them that, so that they are not out of pocket.

If the seller has made a handshake deal and then accepted a higher offer, then the seller should pay the aggrieved party whatever the aggrieved party expended as a result of that. That way, the aggrieved party, whilst they do not get their dream home, at least can continue searching for something and are not out of pocket. The seller obviously benefits from a higher price and the gazumper gets the property but, at least, the victim is not out of pocket. It is worthy of consideration and could also be applied—in whatever reverse way you would need to—in a bad market, where the seller is more likely to be the victim than the buyer, who would be the victim in the normal gazumping situation.

I looked at this, too, Mr Hargreaves, and, like you, I was thinking of penalties. There are probably better ways to go, either the way I have just suggested or perhaps along the lines you are suggesting: that when you actually sign the contract, that is it. It is something that is occurring, and it is not going to go away. It is something that I think we very clearly need to look at.

Might I suggest, until we come up with a solution—in several months; I hope it will not be all that much longer—a practice that I quite like, which is a buyer range. For example, you could have a property go for between $240,000 and $310,000. It has struck me, anecdotally, that that is less likely to result in gazumping than where there is a set price.

There is not much property for sale, so someone comes in pretty quickly and offers a set price. Then someone bumps it up by $20,000 or $30,000. That is just a thought, and it would only be a temporary measure. But that seems to be a slightly fairer way of doing things than the current system.

The opposition are very keen to see the practice counted. It is something that rightfully causes angst to a lot of people, and it is not fair practice. If you say, "I want this for my property," and someone offers you that, you should take it. Indeed many people do, but there are always people who are not going to do that, who are not quite as scrupulous, and people suffer as a result.

I know a number of people who have suffered and, at the very least, I would like to see those people compensated for any financial loss they have incurred as a result. I commend those ideas to the Assembly.

MR SPEAKER: This discussion is concluded.

Confiscation of Criminal Assets Bill 2002

Debate resumed.

MS DUNDAS (4.05): The idea of confiscation of criminal assets is in itself a complex issue, as is the specific area this amendment relates to, which is art and artistic profits as benefits. As we address this whole issue, we need to consider what lies at the core of our legal system: the principles of innocent until proven guilty and of incarceration as not just punishment but also rehabilitation and, within this context, the agreement that we reached in the in-principle stage that criminals should not profit from crime.

The current bill proposes that art will be a proceed of crime until determined otherwise. The exemptions that the Attorney-General waxed on about are not the default situation. The court must determine that these exemptions apply. This bill does not apply to people who have committed crimes against the person; it also applies to fraud, property crime and the like.

If someone does their time and wishes to undertake some artistic expression that relates to their experiences, this cannot be exhibited in a way that might attract money or resources. A book cannot be sold and a piece of art cannot be exhibited in a fee-paying exhibition, because it will automatically be judged a proceed of crime.

I put the question: how does this help with rehabilitation? Is punishment to be forever, for all crime? This law makes the base assumption that someone cannot move on after their committing of a crime and, if they do, they must then ignore the crime and their experience of the subsequent punishment, which might be represented through artistic expression.

I support the amendment in the hope that it will make this entire piece of legislation better, but it will not in itself make this piece of legislation supportable. I have outlined my concerns with this bill, and I believe that it is in essence turning on its head what I thought were the basic premises of our legal system.

MS TUCKER (4.07): I will make a couple of comments in response to points made by members. I did make this quite clear in my presentation, but maybe I did not stress it enough—and Mr Stanhope did not seem to have heard me acknowledge the fact—but there are exemptions and matters which the court has to take account of. That is obviously the case, and I am sorry if I did not make it clear that I was aware of that.

It is important to stress the point again here that the very fact that a person might be brought again before the court to justify their artwork and their right to determine where the proceeds of that artwork will go is of possible detriment to people who have created and sold artworks that are the result of rehabilitative processes that have had a life-changing impact on them.

The exemptions and matters to be considered in this bill—I won't read them out, but they are there for anybody to see in the bill—take into account a number of issues. But it is also incredibly broad in terms of how the artwork is related to the offence. Proposed section 81(1)(c) reads:

> an expression of the thoughts, opinions or emotions of the offender, or another involved person, about the offence.

You couldn't get much broader than that in terms of constraining this particular activity. I stress again that, while I acknowledge that the court has a say, it is the fact that the court is involved that I am concerned about. That is why I ask members to consider supporting this amendment.

Amendment negatived.

Clause agreed to.

Clause 13.

MS TUCKER (4.10): I seek leave to move amendments 3 and 4, circulated in my name together.

Leave granted.

MS TUCKER: I move amendments 3 and 4 circulated in my name *[see schedule 1 at page 489]*. I have already spoken about the reasons for amendment 3, but to briefly recap, it is about the definition of serious crime. I believe this change will bring a whole different range of crimes potentially within the more stringent required forfeiture provisions of this act.

Amendments negatived.

Clause 13 agreed to.

Clauses 14 to 19, by leave, taken together and agreed to.

Clause 20.

MS TUCKER (4.11): I move amendment 5 circulated in my name *[see schedule 1 at page 490].* This completes the work of amendment 2, removing the artistic proceeds from the bill.

Amendment negatived.

Clause 20 agreed to.

Clauses 21 to 25, by leave, taken together and agreed to.

Clause 26.

MS TUCKER (4.12): I move amendment No 6 circulated in my name *[see schedule 1 at page 490]*. This is also consequential to the previous amendments that I have put and lost.

Amendment negatived.

Clause 26 agreed to.

Clause 27.

MS TUCKER (4.12): I move amendment No 7 circulated in my name *[see schedule 1 at page 490]*. This is another consequential amendment to the artistic proceeds issue.

Amendment negatived.

Clause 27 agreed to.

Clause 28 agreed to.

Clause 29.

MS TUCKER (4.13): I seek leave to move amendments 8, 9, 10 and 11 together.

Leave granted.

MS TUCKER: I move amendments 8, 9, 10 and 11 circulated in my name *[see schedule 1 at page 490]*. These are also consequential amendments.

Amendments negatived.

Clause 29 agreed to.

Clauses 30 to 57, by leave, taken together and agreed to.

Clause 58.

MS TUCKER (4.15): I move amendment No 12 circulated in my name *[see schedule 1 at page 491]*. It is also a consequential amendment.

Amendment negatived.

Clause 58 agreed to.

Clauses 59 to 63, by leave, taken together and agreed to.

Clause 64.

MS TUCKER (4.15): I move amendment No 13 circulated in my name *[see schedule 1 at page 491]*.

Amendment negatived.

Clause 64 agreed to.

Clauses 65 to 79, by leave, taken together and agreed to.

Clause 80.

MS TUCKER (4.15): I move amendment number 14 circulated in my name *[see schedule 1 at page 491]*. It is also a consequential amendment.

Amendment negatived.

Clause 80 agreed to.

Clause 81.

MS TUCKER (4.16): I will be opposing this clause. I move amendment 15 circulated in my name *[see schedule 1 at page 491]*. This is also on the artistic proceeds.

Amendment negatived.

Clause 81 agreed to.

Clause 82 agreed to.

Clause 83.

MS TUCKER (4.16): I move amendment 16, circulated in my name, also consequential:

Amendment negatived.

Clause 83 agreed to.

Clause 84.

MS TUCKER (4.17): I move amendment number 17 circulated in my name *[see schedule 1 at page 491]*.

Amendment negatived.

Clause 84 agreed to.

Clause 85.

MS TUCKER (4.17): I move amendment No 18 circulated in my name *[see schedule 1 at page 491]*.

Amendment negatived.

Clause 85 agreed to.

Clauses 86 to 90, by leave, taken together and agreed to.

Clause 91.

MS TUCKER (4.18): I move amendment No 19 circulated in my name *[see schedule 1 at page 492]*.

Amendment negatived.

Clause 91 agreed to.

Clause 92.

MS TUCKER (4.18): I move amendment No 20 circulated in my name *[see schedule 1 at page 492]*. This is the last of the consequentials on the artistic matter.

Amendment negatived.

Clause 92 agreed to.

Clauses 93 to 101, by leave, taken together and agreed to.

Clause 102.

MS TUCKER (4.19): I seek leave to move amendments 21 and 22 circulated in my name, together.

Leave granted.

MS TUCKER: I move amendments 21 and 22 *[see schedule 1 at page 492]*. This is about notice to the Assembly when the Public Trustee modifies, disposes of or destroys restrained property. I think this is fairly self-explanatory. It is about putting on the public record what is happening. Otherwise, there is no way for us to keep track of it.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.19): Mr Deputy Speaker, the government opposes Ms Tucker's amendments but sympathises with the import of her amendments. It is important that there is openness in these things, and Ms Tucker's amendments are designed to ensure an appropriate degree of openness in the revealing of information at the point when seized or confiscated property is to be disposed of.

Section 102(1) says:

> The public trustee must give written notice of a proposed sale, modification or destruction of restrained property under section 101 (the proposed action) to—
>
> (a) the owner of the property (if known); and
>
> (b) anyone else the public trustee believes may have an interest in the property.

Ms Tucker's amendment adds a paragraph there:

> (c) the Minister.

Ms Tucker's proposed 102(1A), her next amendment, then provides that:

> (1A) The Minister must present the notice—

the notice that he or she was given under 102(1)(c)—

> to the Legislative Assembly within 3 sitting days after the day the Minister receives the notice.

My department advises me that it is the view of our law enforcement agency, the AFP—a view reinforced by the DPP—that there are issues for police investigators and directors of public prosecutions concerning the potential forced release of information about the public notification of a proposed sale, modification or destruction of restrained property in this way. The concerns go essentially to the putting into the public domain of information about the destruction of restrained property.

The example provided to me by the AFP, and reinforced by the DPP, is that in drug activities the police not unusually, through their investigations, seize amounts of drugs. Just recently, huge marijuana crops have been discovered. The police confiscate that asset and destroy it. But often police do not disclose the discovery of, say, drugs until

they pursue other lines of inquiry—lines of inquiry that they may at different times pursue for many months. They nevertheless seek to dispose of the asset.

The position that has been put to me, and one that I accept—I have no option but to accept it, and I do accept the word of the Chief Police Officer and the Director of Public Prosecutions—is that there are circumstances in which the public notification of the destruction of some seized assets that are obviously criminal assets would compromise ongoing investigations and police activity.

On the basis of that advice, the government will not support these amendments. It will not support a requirement, in all instances across the board, for certain information to be made public where the publication of that information would compromise criminal investigation, or in some cases perhaps criminal trials.

Accepting, however, Ms Tucker's concerns, I foreshadow an amendment, which is now being circulated, which imposes greater reporting requirements on the Public Trustee in dealing with assets or confiscated proceeds. The amendment does not address the precise point that Ms Tucker is seeking to address, but it does impose a greater reporting requirement on the Public Trustee, but after the event and on the advice of the Chief Police Officer.

MR STEFANIAK (4.24): I thought initially that, of all Ms Tucker's amendments, this one might have some justification and rationale behind it. But I note exactly what the Chief Minister says, and the opposition would not want anything that would compromise policing inquiries or hinder the proper administration of justice—the operation of the police or the DPP, in this instance. Accordingly, we will be opposing those two amendments brought by Ms Tucker.

In relation to the amendment moved by the Attorney, which I have not had a chance to read, if the Attorney can assure me that this does not compromise any proper AFP operation or any proper operation of the DPP—I see he is nodding—then we would be mindful of supporting that. It is handy for people to be given details of how much money is being confiscated and what has occurred in any given period of time.

I was quite shocked to read newspaper reports several months ago that only $40,000 worth of the $550,000 worth of assets seized was able to be confiscated—and it was not a case of somebody getting it wrong in court. A number of magistrates have made the same sorts of observations—and I see the Chief Magistrate here—that there were things that the courts simply could not do under the old legislation, which clearly needed improving.

That was the first I had heard of what the actual figures involved were, so some form of reporting is handy. But it cannot be done in any way that would adversely affect a police operation or efforts by the DPP. The community is very concerned to see justice done and see the ill-gotten gains of criminals, rightfully, forfeited and confiscated by the authorities. That is of paramount concern here, and one of the good aspects of this bill is that it ensures that that is much more likely to happen now than it ever was in the past.

MS DUNDAS (4.26): I believe that the amendment moved by Ms Tucker will allow the Legislative Assembly to keep a watch over the implementation of this bill. As I have said

repeatedly today, there is a lot of legal argument over this bill, but it is likely to pass today. We should continue to monitor the operation of this legislation. This amendment will bring it back to the attention of the Assembly as goods are sold, destroyed or modified. Hence I believe it is well worth our support.

The minister must present the notice to the Legislative Assembly within three sitting days, which usually would be a great deal of time for cases to progress. But the bill refers to the Public Trustee giving written notice to anyone else the Public Trustee believes may have an interest in the property. There is no guarantee that a person who has an interest in the property will keep that information secret. So I do not think adding the minister to the list of people who receive this information and then the Assembly three sitting days afterwards has associated with it the issues the minister raised, unless he believes that anyone else the Public Trustee believes may have an interest in the property is going to keep their mouth shut about the fact that the property is being destroyed or sold.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.28): I want to respond to that one point. The example I used was narcotics or drugs that have been seized. In that circumstance, nobody else is going to own up to an interest in a paddock of marijuana at the back of Calwell or some other narcotic. Yet this amendment would require that notice to be given to me for me to table it within three days. If it was given me today, I would have to table it next Tuesday. If it is tabled in this place, it will be public. It will go to the media.

There are circumstances in which the scenario you raise, Ms Dundas, does not apply. There are circumstances in which the notification to me is a public notification to the media. Any notification in this place is a public notification. There would be circumstances in which there was no other person the Public Trustee would notify.

I can only go on the advice that I am provided with by the Chief Police Officer of the ACT and the Director of Public Prosecutions of the ACT. They have looked at this provision specifically at my request, and they advised me directly, unambiguously, that the passage of this amendment would adversely affect certain investigations or certain prosecutions. That is the advice provided to me by the Chief Police Officer and the Director of Public Prosecutions. You can take it or leave it, but I am inclined to take it.

MS TUCKER (4.30): The amendment Mr Stanhope proposes to move is better than nothing, so I will support it.

Amendments negatived.

Clause 102 agreed to.

Clause 103.

MS TUCKER (4.31): I seek leave to move amendments 23 and 24 circulated in my name together.

Leave granted.

MS TUCKER: I move amendments 23 and 24 *[see schedule 1 at page 492]*. These amendments are related to the amendments that have just failed.

Amendments negatived.

Clause 103 agreed to.

Proposed new clause 103A.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.31): I move an amendment to insert new clause 103A *[see schedule 2 at page 493]*. I have spoken to the matter and will speak again.

MS DUNDAS (4.32): I guess this harks back to the discussion we had earlier. It provides that when it is deemed appropriate that this information be made available it will be made available in the annual report and not the Assembly, which was the thrust of Ms Tucker's amendments. Regardless of where this information is reported, reporting needs to be better.

In the Public Trustee's annual report of 2002 there is a simple bar graph showing the funds raised over the past eight years from the legislation we are seeking to replace here today. The range is from $180,000 in 1995 and 1999 to $4,000 or $5,000 in 1996 and 1997. It appears that the seizure of criminal assets is a seasonal job. The most recent figures are $80,000 in 2001 and $48,000 in 2002.

The corresponding JACS annual report reports only a small figure in 2001 and nil for 2002. Obviously we have some discrepancies that can be tightened up. What also needs to be tightened up is the evidence that the money is being spent on community safety initiatives and crime prevention measures as is prescribed.

From the bar graph in the Public Trustee's report, the act reaps on average $66,000 per year. Nowhere in publicly released documents can I find what services this money has been spent on. Regardless of the success or failure of this amendment, I call on the Attorney to speak with the department to ensure clear reporting not only on the income but also on what services this money is spent on.

Proposed new clause 103A agreed to.

Clauses 104 to 268, by leave, taken together and agreed to.

Schedule 1 agreed to.

Dictionary agreed to.

Title agreed to.

Bill, as amended, agreed to.

Indigenous education
Paper and statement by minister

Debate resumed from 29 August 2002, on motion by **Mr Stanhope**:

> That the Assembly takes note of the paper.

MR PRATT (4.35): I welcome this six monthly report. I have little issue at all with the Chief Minister's statement on the paper. The government is continuing a program that has been in place for some time and is pretty well proven.

The trend lines in the report have not changed too much compared to the previous report. The gap between indigenous and non-indigenous literacy and numeracy performances has not changed from the previous report. My best examination of section 2 of the table confirms the observations I made in my response to the previous report. It is at least satisfactory that performance levels in indigenous literacy and numeracy have not declined. Some improvements in standards in those two areas of education have certainly been made.

I welcome the plan the department have put in place, as detailed in the report, addressing performance, particularly focusing on the poorer performances for year 5. My great concern—and I would imagine this would be the concern of most of us in this place—is that year 5 is a time when a lot of our children, particularly boys, indigenous and non-indigenous, disengage from core learning and participation in school activities.

This, therefore, is a vulnerable area in indigenous education that needs close attention. I hope the department plan takes a multifunctional approach to tackling year 5 learning. For example, consultation between the department and year 5 students' families will be very important.

I go back to comments I made on the previous report. They are still very relevant now. I continue to stress that I believe that this report should also make observations on the department's success or otherwise in connecting with and staying connected with indigenous families with respect to their children's education progress. This, I believe, is axiomatic for indigenous children, particularly children at risk. This is a principle that should also apply to children at risk in non-indigenous families and from non-indigenous backgrounds.

Such indigenous commentators as Pearson and Dobbs have stressed the need for government departments and communities to maintain close and positive contacts with indigenous families in respect of youth affairs and educational issues.

I believe that this report is quite a useful one. I also believe that the six monthly reporting system is commendable. It is a valuable tool in one of our more sensitive and more vulnerable areas of ACT education. As the Chief Minister said earlier today, it is baffling that in the ACT we have the same negative standards in indigenous affairs pro rata as other less well served and perhaps less than pristine jurisdictions.

Clearly, it is very important that the community provide additional focus on indigenous education. That seems to be happening. I welcome that. I look forward to the next report, to see whether we are closing the gap between indigenous and non-indigenous education, particularly in numeracy. I hope I see in the next report comments about how well the department is connecting with indigenous families and maintaining those important links to encourage our young kids to get on with their education, feeling that they are very much part of the community.

MS DUNDAS (4.40): This report is designed to provide members of the Assembly with a clear guide on the status of indigenous education in the ACT. The report details key areas that need attention, with clearly defined statistics giving a good overview of the state of indigenous education. The level of detail involved leaves no doubt as to the improving but still concerning status of indigenous education in the ACT. The report also details the objectives and programs of the education department in indigenous education. These objectives are admirable and ones that I believe are in the best interests of indigenous education in the ACT.

The ACT Democrats believe the disadvantage that indigenous people suffer in education is a key concern that needs immediate attention in our education system. However, the report’s one major failing is that it lacks the finer detail needed to show a way forward. The report is filled with lengthy lists of achievements and plans but does not include the vital details needed to effectively evaluate the methods and means of progression to date or to provide a detailed and practical vision of the future.

This level of detail is vital so that a clear methodology is developed to allow all those involved in indigenous education to be part of the solution instead of being left baffled because of lack of clear guidance. The lengthy list of statistics in the report also needs to be considered. While they do provide a clear view of the current status of indigenous education, statistics must be recognised as being indicators of what needs to happen, not as solutions in themselves.

As always, now is the time for clear actions. The problems with indigenous education have been identified and objectives of the department have been decided on. What is lacking now is an accurate description of how to achieve these objectives and solve the problems facing indigenous people in the education system.

I recognise that this is a complex and difficult issue, one that is not going to be solved overnight. But that should never be an excuse to take no action at all. We await the next report and the next budget to see priorities and progress in indigenous education.

MS TUCKER (4.43): This is the fourth six monthly report on performance in indigenous education. We have had a fifth report, so I might refer to it as well.

MR SPEAKER: Whilst remaining relevant.

MS TUCKER: It is very relevant. It is about the same subject. Because it is the fifth report and not the fourth, am I going to be ruled out of order if I refer to it?

MR SPEAKER: I am sure that you will manage to remain relevant.

MS TUCKER: I am sure I will. I think it is related, but I am happy to talk generally anyway and not cause a problem. The points Mr Pratt made about links with the family are very important. I want to take the opportunity in this debate to raise the whole question of the compact. I am trying to remember when the compact was signed. There is no date on it. My memory is that it was last year.

I remind members of the language in the commitment. It states:

> In order to achieve equal educational outcomes for Indigenous and non-Indigenous school populations in the Australian Capital Territory, Indigenous communities in the ACT and Jervis Bay Territory and the ACT Department of Education, Youth and Family Services make the following commitments.
>
> We, indigenous families of the ACT, acknowledge primary responsibility for school attendance by our children. We commit to:
>
> - participation in consultations with the ACT Department of Education, Youth and Family Services.
>
> - support for all mutually agreed programs and initiatives designed to improve educational outcomes for Indigenous students.

The preamble to the commitment states:

> Indigenous communities in the ACT acknowledge the goodwill of the ACT Department of Education, Youth and Family Services and support its efforts to improve outcomes for Indigenous children and families.

I do not have a problem with any of that if it is broadly supported by Aboriginal people in the ACT. It is brave to say broadly that indigenous families of the ACT do anything. I think it is a great thing to say if you are comfortable and solid in saying it.

The concern I raise today—and I am asking the new minister to take an interest in this, and maybe pick it up—is that I think it is important that the government evaluate how well the compact is understood and supported. While a statement like that looks great, it is a slap in the face to Aboriginal families who have never heard of it, because it is such a broad and encompassing statement. When I read it, I made inquiries around the ACT and I followed them up. Of the key people and families I asked, only one was aware of that statement.

If you want to have this kind of agreement with the indigenous community in Canberra, then it is going to require very proactive time-consuming communication. I know that the compact came out of the Indigenous Education Consultative Body and was signed by Christopher Bourke. I am interested to know what work has been done to involve the community since the signing of that commitment and that compact.

The fourth report of February 2002 has a paragraph on the compact:

> The Indigenous Education Compact states the commitment of both Indigenous families and the department to working together to overcome inequities and improve the experience of schooling and outcomes for Indigenous students. The wording has been agreed to by the Indigenous Education Consultative Body and the department. Support of Indigenous parents for the Compact is being sought.
>
> The IECB has requested that the Indigenous Compact be provided to parents for comment before being released.

I think the compact may have been launched after that. I am not clear on the timeframe. Maybe the minister can get back to me on that later if she needs to take that matter on notice.

The whole question of working with families is stated and understood by everybody. A holistic approach has to be taken to improving the lot of Aboriginal people in the ACT. I mention that again. It has come up in my Health Committee. People working in the field consistently say that you have to recognise health as the World Health Organisation recognises it—in a holistic sense, which includes taking into account not just physical health but support for Aboriginal people in education, housing and so on.

Relevant to this discussion is the linking of all the sectors when we are working on improving the educational outcomes for Aboriginal children. Once again, that is about linking with families, but it is also about linking with other services that may be supporting families, and it is most definitely about finding out from people themselves what needs to happen to improve their physical health, educational outcomes and so on.

I have another question which I am also happy for the minister to take on notice. From memory, the indigenous educational unit changed in 1998. It moved to Mawson. There have definitely been improvements in the focus on indigenous education since that time. But when the unit moved to Mawson I understand that the workload for indigenous education workers trebled. There were advantages, in that they had wider contact with the community because they were working across more schools, whereas before they worked in a small number of schools with a limited number of kids.

There are pluses and minuses for both systems, but the minus for the current one is that there are so many kids. I am interested to know what the caseload is for those workers so that I can try to understand whether it is workable. I would be interested in the government giving me an analysis of that.

It is about working with other agencies—not just government agencies but agencies in the community sector. Gugan Gulwan, for example, has a lot of insights into what is going on for young people in mainstream schools. It is also about recognising the importance of creative responses to the situation. If you have children in mainstream schools, whether they are indigenous or non-indigenous does not matter. It is important to understand how fantastic creative ideas can come from the community and from the bureaucracy. It is also important to be prepared to take some risks in progressing innovative ideas and trying things. If they do not work, that is okay. We give it a go. If we do not do that, there is a danger that we will be safe but sorry.

MS GALLAGHER (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (4.52): I thank members for their contributions. I support the statements made by Mr Pratt, which could be a first, about working with families and looking at particular age groups where disadvantage is occurring.

Ms Tucker talked about evaluation of the compact. It was launched in December last year. I can find out about whether reviews are built into it. It has not been operating for long. I will also get back to her about the caseload of workers.

I will restrict my comments to the fourth six monthly report on performance in indigenous education. The report was tabled in August 2002. It covers the period to 28 February last year.

Reporting on the performance of indigenous students was initiated by Labor in 2000. The government is committed to providing effective and appropriate support services and programs for indigenous students which will assist them to achieve improved educational outcomes. The government also 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, however, additional needs that the government recognises require targeted assistance.

Progress in indigenous education is being made. However, as other speakers have already pointed out, further work is needed to achieve comparable education outcomes between indigenous and non-indigenous students. The ACT government has recently committed itself to a joint project with the Commonwealth designed to improve outcomes for indigenous students. The project will focus on education and youth issues and will be based on community consultation.

The government is undertaking an in-depth review of education of Canberra's indigenous students. The Indigenous Education Consultative Body and the ACT Department of Education, Youth and Family Services are conducting the review of indigenous education in ACT government schools. The Centre for Australian Indigenous Studies at Monash University in Melbourne has been engaged to conduct the review. Professor Colin Bourke will be heading the review team.

This is an important review that will guide further developments in indigenous education in the Department of Education, Youth and Family Services. What is learned from this review will guide planning and help the government to provide programs that effectively target problems being experienced by some indigenous students in our schools.

The review team has met with a variety of stakeholders. They include departmental officers, students, teachers, principals, parents and members of the Aboriginal student support parental awareness committees. Professor Bourke is now writing the report.

It is a stated goal of the Stanhope government to be inclusive of all Canberrans and to give all our children every chance to realise their potential. Late last year my department distributed to schools a discussion paper for school communities, entitled *The Inclusivity Challenge—Within Reach of Us All*.

The purpose of this paper was to promote discussion and debate within school communities. When educators, parents, carers and members of the wider community have the opportunity to discuss issues related to inclusivity, they become very focused on how their school can provide quality education outcomes for all students enrolled.

This type of debate is important if our efforts to improve the outcome for the ACT's indigenous students are to be effective. The discussion paper promotes debate in school communities about inclusivity and meeting the needs of all students through effective learning and teaching.

The discussion paper on inclusivity is not directly targeted towards indigenous students. However, it is another tool for providing effective and appropriate support services and programs for indigenous students to assist them to achieve improved educational outcomes.

There are a number of key elements in the fourth report on performance in indigenous education that I will draw to the attention of members.

The new Indigenous Education Consultative Body is in place and providing advice to government on education and community services matters. It has developed a strategic plan for 2002-04. The goal of the IECB is to work with the ACT government to increase the educational outcomes for indigenous students to standards comparable with those of non-indigenous students and to a better understanding of indigenous cultures.

The IECB has consulted with all families of indigenous students in the development of the indigenous education compact. The point you raised, Ms Tucker, is interesting. The advice is that they have consulted. If they have and families are still unaware of the compact, it raises another issue which we can look at.

The indigenous educational compact commits all stakeholders to work together to overcome inequities and improve the experience of schooling and outcomes for indigenous students. As I said, the compact was officially launched last December by the previous minister, Mr Corbell.

The government considers as a priority the continued improvement of literacy and numeracy outcomes through indigenous education to levels comparable with those for non-indigenous students. The ACT assessment program enables comparison between indigenous and non-indigenous students in literacy and numeracy, and the results are provided in section 2 of the tabled report.

Results from the assessment program in 2001 indicate that, while progress is being made, there is much more to be done to address the gap between indigenous and non-indigenous results. The indigenous education unit and the literacy and numeracy team are working with schools to develop individual learning plans that address the literacy and numeracy needs of indigenous students.

The gaps between indigenous and non-indigenous students meeting the national benchmark in year 3 reading, year 5 reading and year 3 numeracy are decreasing. However, as Mr Pratt pointed out, the gap in year 5 numeracy is of serious concern.

The services to indigenous people action plan 2002-04 forms part of the ACT government schools plan 2002-04, Within Reach of Us All. The plan was developed in conjunction with another key plan for government school education, the student support action plan.

The services to indigenous people action plan outlines the department's view for improving services and educational outcomes for indigenous children, youth and families. The main goals of the plan are to overcome racism and value diversity; to form genuine and ongoing partnerships with indigenous communities; to create safe, supportive, welcoming and culturally inclusive education and service environments; and for indigenous young people to achieve outcomes equitable with those of the total population.

The draft plan was ratified by members of the IECB during 2001. After lengthy consultation, the final plan was published and launched in July 2002. The plan sets out the outcomes that are to be achieved and the actions that must be taken by schools and central office areas of the Department of Education, Youth and Family Services. The plan is realistic and achievable.

The equity and diversity plan 2000-02 specifically targets the employment of more indigenous staff in education. Officers on recruitment panels are trained in cultural awareness prior to the commencement of the recruitment process. Last year we sent a recruitment team to the Northern Territory to try to attract indigenous teachers to the ACT. It is quite difficult, as many of those teachers prefer to stay in their local communities, but it is something we are working on.

The staff induction program is continuing and has been expanded to include non-teaching staff. All participants take part in a cultural awareness module that includes indigenous cultural awareness.

Through the recording of attendance on the MAZE administration system in all schools, more accurate data on attendance is available. With the work of schools and the indigenous education unit staff, the average attendance rates for indigenous students are improving in both primary and high schools.

Finally, I would like to emphasise the importance of this report. It demonstrates that the government is implementing effective programs that are addressing the needs of indigenous students, and it keeps the issue of indigenous student education on the table, where it should be.

I look forward to continuing to work with the Department of Education, Youth and Family Services, the ACT indigenous community and the Indigenous Education Consultative Body to ensure further improvement in performance in indigenous education.

Debate interrupted.

Adjournment

MR SPEAKER: It being 5 pm, I propose the question:

> That the Assembly do now adjourn.

Mr Wood: I require that the question be put forthwith without debate.

Question resolved in the affirmative.

The Assembly adjourned at 5 pm.

Schedules of amendments

Schedule 1

Confiscation of Criminal Assets Bill 2002

Amendments circulated by Ms Tucker

1
Clause 10 (2)
Page 7, line 6—

omit

2
Clause 12 (2), example
Page 9, line 13—

omit

3
Clause 13 (2), definition of *serious offence*
Page 10, line 18—

omit the definition, substitute

serious offence means—

(a) a serious narcotics offence; or

(b) an offence against the *Crimes Act 1900*, section 114D (Organised fraud); or

(c) an offence against the *Crimes Act, 1900*, section 114B (Money laundering) involving property that is proceeds of crime under that section in relation to an offence mentioned in paragraph (a) or (b).

4
Proposed new clause 13 (2A)
Page 10, line 22—

insert

(2A) For subsection (2), in the definition of ***serious offence***:

narcotic substance—see section 90.

possession includes possession for supply.

production includes growing and manufacture.

serious narcotics offence means an offence—

(a) involving the production, possession, supply, importation or export of a narcotic substance; and

(b) involving a trafficable quantity, or more, of the narcotic substance.

trafficable quantity, of a narcotic substance in relation to which a serious narcotic offence is committed, means—

(a) a trafficable quantity within the meaning of the law against which the offence was committed; or

(b) if that law does not mention trafficable quantities—a trafficable quantity within the meaning of the *Customs Act 1901* (Cwlth).

5
Clause 20
Page 17, line 13—

[oppose the clause]

6
Clause 26 (2) (f)
Page 21, line 23—

omit

7
Clause 27 (1)
Page 22, line 19—

omit clause 27 (1), substitute

(1) This section does not apply to an application for an unclaimed tainted property restraining order.

8
Clause 29 (3)
Page 25, line 3—

omit

If the application is not for an artistic profits restraining order, the

substitute

The

9
Clause 29 (3), note
Page 25, line 8—

omit

10
Clause 29 (6)
Page 25, line 24—

omit clause 29 (6), substitute

(6) The affidavit must state that the police officer believes that the property sought to be restrained may be required to satisfy a purpose mentioned in section 22 (Restraining orders—purposes).

11
Clause 29 (7)
Page 26, line 1—

omit

subsection (6) (a)

substitute

subsection (6)

12
Clause 58 (1) (b)
Page 56, line 19—

omit

(other than an artistic profits restraining order)

13
Clause 64
Page 61, line 4—

omit clause 64, substitute

64 Unclaimed tainted property—non-application of div 5.4

This division does not apply to property restrained under an unclaimed tainted property restraining order.

Note Unclaimed tainted property is forfeitable under div 5.3

14
Clause 80, definition of *benefits*, paragraph (b)
Page 76, line 15—

omit

15
Clause 81
Page 77, line 12—

[oppose the clause]

16
Clause 83 (4)
Page 79, line 26—

omit

17
Clause 84 (2)
Page 80, line 11—

omit

18
Clause 85 (1)
Page 80, line 17—

omit everything after

probabilities

substitute

that the offender committed a serious offence within the relevant period.

19
Clause 91 (4)
Page 86, line 8—

omit

20
Clause 92 (6)
Page 87, line 24—

omit

21
Proposed new clause 102 (1) (c)
Page 96, line 17

insert

(c) the Minister.

22
Proposed new clause 102 (1A)
Page 96, line 20

insert

(1A) The Minister must present the notice to the Legislative Assembly within 3 sitting days after the day the Minister receives the notice.

23
Proposed new clause 103 (3) (c)
Page 97, line 23

insert

(c) the Minister.

24
Proposed new clause 103 (4)
Page 97, line 23

insert

(2) The Minister must present the notice to the Legislative Assembly within 3 sitting days after the day the Minister receives the notice.

25
Dictionary, definition of *artistic profits*
Page 218, line 3—

omit

26
Dictionary, definition of *artistic profits restraining order*
Page 218, line 4—

omit

27
Dictionary, definition of *narcotic substance*
Page 223, line 20—

omit the definition, substitute

narcotic substance, for section 13 (2A) (Meaning of ***offence*** and particular kinds of offences) and division 7.3 (Value of benefits)—see section 90.

Schedule 2

Confiscation of Criminal Assets Bill 2002

Amendments circulated by Attorney-General

1
Proposed new clause 103A
Page 97, line 23—

insert

103A Notice details to be included in public trustee's report

(1) The public trustee must include details of a notice given under section 102 or 103 in the public trustee's report under the *Annual Reports (Government Agencies) Act 1995* for—

(a) the period during which the notice was given; or

(b) if the chief police officer has, under this section, declared the publication of details of the notice to be prejudicial—the next period after the chief police officer revokes the declaration.

(2) Before including details of the notice in a report under subsection (1) (a), the public trustee must consult the chief police officer about whether publication of the details of the notice in the report would be likely to prejudice any police investigation.

(3) If, in the chief police officer's opinion, the publication of the details of the notice in the report would be likely to prejudice a police investigation, the chief police officer must—

(a) declare the publication of the details to be prejudicial; and

(b) tell the public trustee, in writing, that the declaration is made.

(4) If, in the chief police officer's opinion after making a declaration, the publication of details of the notice would no longer be likely to prejudice any police investigation, the chief police officer must—

(a) revoke the declaration; and

(b) tell the public trustee, in writing, that the declaration is revoked.

(5) In this section:

police investigation includes a contemplated police investigation.