DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

11 March 2003

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Tuesday, 11 March 2003

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

Petition
Gay, lesbian, bisexual, transgender and intersex people

The following petition was lodged for presentation by **Mr Hargreaves** *from 143 residents.*

> To the Speaker and members of the Legislative Assembly for the Australian Capital Territory
>
> This petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that many laws in the Australian Capital Territory discriminate against gay, lesbian, bisexual, transgender and intersex people.
>
> Your petitioners therefore request that the Assembly legislate to achieve equality for gay, lesbian, bisexual, transgender and intersex people within the community who face discrimination in their day to day lives.

Legal Affairs—Standing Committee
Scrutiny Report No 27

MR HARGREAVES :I present the following report:

> Legal Affairs – Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) – Scrutiny Report No. 27, dated 11 March 2003, together with the relevant minutes of proceedings and the confirmed minutes relating to report No 26.

I seek leave to make a brief statement.

Leave granted.

MR HARGREAVES: Scrutiny Report No 27 contains the committee's comments on three bills, 23 pieces of subordinate legislation and one government response.

I draw attention to two issues. One is a further explanation the committee received from the legal adviser with respect to the Bushfire Inquiry (Protection of Statements) Bill 2003. Argument has been advanced on both sides regarding the protection of privilege for people giving evidence to the McLeod inquiry. That is the issue to which this explanation refers.

The additional information from the legal adviser is that qualified privilege exists at common law. If an individual gives evidence to Mr McLeod that has some defamatory colour to it, it has qualified privilege, provided it is given without malice and in private.

It is only a measure of privilege; it is not complete privilege. If a third party becomes aware that such evidence has been given and feels that they can start action on that, they can still do that. Evidence given in public hearing does not attract privilege.

The other thing I would draw members' attention to is reference in the report to strict liability. The committee is urging government to explain why strict liability or any type of liability ought to apply when determining offences or penalties within legislation.

The impact of the Legislation Act and the criminal code is rather new to the Assembly. In the past we have not codified strict liability or any type of liability. Liability goes to what one can use as a defence. Codifying liability in the Legislation Act and the criminal code has created a new environment. Unless legislation providing that something attracts strict liability is cross-referenced with the Legislation Act and to the criminal code, people are going to miss it. Your average mug punter out there is not going to pick what definitions mean and what the implications of a given piece of legislation are.

We need an explanation of why a particular liability will apply in a piece of legislation. The community is encouraging the government, parliamentary counsel and departments to indulge in more cross-referencing. The difficulty for non-lawyers in reading legislation is made worse by the fact that a lot of definitions in legislation are explained in the Legislation Act and possibly the criminal code. To make it easier for non-lawyers to read legislation and see how it affects them, the government is encouraged to continue its practice of cross-referencing. The government has been pretty good about that, but not in all ministries. We would like to see it in all ministries.

I commend the report to the Assembly.

Taxation (Government Business Enterprises) Bill 2002

Debate resumed from 18 February 2003, on motion by **Mr Quinlan**:

> That this bill be agreed to in principle.

MS DUNDAS (10.37): Mr Speaker, this bill brings territory-owned businesses into line with the memorandum of understanding on the national tax equivalent regime. The Democrats generally support the idea that government businesses should be constrained by taxation arrangements similar to those in the private sector. With a tax equivalent paid by government business enterprises, it becomes clearer where government resources are most efficiently allocated.

There are a number of services that the Democrats believe should always be delivered solely by government, such as water and electricity supply. But there are other areas where the private sector has always operated, and there is no compelling reason for government to deliver those services, either exclusively or alongside the private sector. The kind of services that Totalcare provides arguably fall within that category, as none are obvious candidates for a government monopoly. In cases such as this, payment of an income tax equivalent by the government business enterprise is the least that the business community of Canberra can expect so they know that they are competing with the government enterprise on a level playing field.

Sadly, Totalcare has not been paying an income tax equivalent and has not been returning a profit to ACT taxpayers. There is reason to have a government business enterprise operating fleet management, road repair and non-essential laundry services only if these enterprises are returning a profit.

Once again I call on the government to make a courageous decision about Totalcare and to put an end to the unnecessary misallocation of taxpayers' moneys so that money can instead go to areas of greatest need.

MS TUCKER (10.38): The Greens will be supporting this bill. We understand it to be largely a machinery bill that arises from the government's commitment to national competition policy. Over a long period in this place, I have drawn attention to the inherent unsoundness of the national competition policy and its potential for limiting government's ability to act in the interests of its citizens, which should be a government's primary concern.

Having been locked into this process by government, we continue to challenge measures under the national competition policy that work against the public interest rather than for it. This bill, however, is benign in its effect and does not appear to compromise the public interest. It provides for a more consistent and transparent regime whereby government business enterprises pay to ACT consolidated revenue an equivalent to Commonwealth income tax, so that there is no unfair competition with private businesses. It is about keeping things ticking along in line with the principles of competition policy, which we can challenge but not on this bill.

This applies under competition policy where the government business enterprise is in competition with the private sector. I understand that all the GBEs to which it applies are already paying such an income tax equivalent. Indeed, I understand that some GBEs that have been paying under existing arrangements will be removed from the list of paying enterprises as it is deemed no longer appropriate in the case of their business dealings.

I understand that the GBEs concerned have been consulted and are prepared. On that basis and because of the improved transparency and efficiency the new arrangement promises, we are prepared to support the bill. While there is an element of retrospectivity involved, which we would normally be concerned about, this too is not such an issue in this legislation. I note that the scrutiny of bills committee did not raise serious concerns in this regard. Being a member of that committee, I am aware of that.

I trust that the new framework will deliver the benefits of consistency and transparency that the government hopes for. But I believe that there are still fundamental questions to be asked about turning certain government activities into businesses, causing them to operate as businesses. Totalcare is a good example which I think we will be debating soon.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism and Minister for Sport, Racing and Gaming) (10.41), in reply: I thank members for their support of the bill. As Ms Tucker has rightly pointed out, it is largely a machinery bill that brings the ACT into line with a general memorandum of understanding between the Commonwealth and the states on equivalent taxation regimes to put businesses on a level footing.

While I am on my feet, I might comment, as other members have, on Totalcare. Totalcare is not on a level playing field with other enterprises, mainly because working conditions and security of tenure of employment in the private sector have been eroded under so-called labour market reforms introduced by the current coalition government, in particular by Mr Tony Abbott and by Mr Peter Reith before him—two very generous souls on the political landscape!

We do face difficulties with the competitiveness of Totalcare, because to a large extent the competitive environment has changed significantly and, we would contend, not for the better. However, there will be, as there always is with this government, a real world dimension to what we do from this point on. We hope to be able soon to advise the Assembly of steps that are being taken.

I thank members for their support and commend the bill to the house.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Debate resumed from 12 December 2002, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MS DUNDAS (10.44): Mr Speaker, today we are debating the rights and responsibilities of people who live in the ACT. This is the first step in a longer process of examining the status of lesbian, gay, bisexual, transgender and intersex people in the ACT. I have raised these issues on a number of occasions in this Assembly, and I am glad that through regular prompting the government's commitment to Canberra's queer communities is beginning to finally bear fruit.

The ACT was once at the forefront of GLBTI law reform. The Domestic Relationships Act 1995 was landmark legislation in Australia that gave same-sex couples rights in relation to property transfers and settlements for the first time. However, as other states have gone through law reform processes, the ACT has slipped behind and now lags behind more progressive states, particularly Western Australia and Tasmania. Similarly, New South Wales and Victoria have altered many pieces of legislation to address these issues, and Queensland has a bill before its parliament to do so as well. I notice that recently the South Australian government has begun a review of its legislation and is currently undertaking community consultations on the topic. The legislation we are debating today is long overdue in the ACT, and I hope that in the coming months the ACT will once again become a national leader in promoting equality for the queer community.

Creating equality under the law for all members of our community shows that this Assembly as an institution believes in equal rights for its citizens and is prepared to back those beliefs up with action, not just words. As leaders in our community, we need to promote equality in our society and encourage tolerance in our community. Queer rights are human rights, and a failure to protect them diminishes the human rights of everyone in our community.

This bill makes simple amendments to a number of laws to recognise same-sex relationships in relation to domestic violence, property law, medical treatment, guardianship of the ageing or mentally infirm, disclosure of pecuniary interests and access to some partner benefits under ACT law. The bill also covers how transgender and intersex people are treated when required to undergo a body search by a person in authority.

If this bill passes the Assembly, as I hope it will today, it will give people in same-sex relationships a number of new rights. They will be able to access medical information and make decisions about treatment and organ donation of their partners. They will also be more certain of their rights in relation to the care of an ageing or mentally deteriorating partner. They will also be properly included as family members in a number of pieces of legislation, allowing them access to the courts and proper consideration in situations such as domestic violence and criminal cases. These are things that are long overdue. We have heard of many people going through an already traumatic time having their situation made even worse by the discrimination inherent in our legal system.

This bill is only a first step, and a small step at that. The legislation this bill amends does not deal with the wider and more controversial issues of legal discrimination that queer Canberrans face under ACT law. It does not deal with a number of issues that I believe could have easily been included. It does not extend workers compensation to the partners of people in a same-sex relationship or allow them to sue for damages under the Compensation (Fatal Injuries) Act. I hope this is not due to sentiments similar to those expressed in the scrutiny of bills report for this piece of legislation, which states that expanding the number of possible recipients for compensation may increase insurance premiums.

I am unsure about other members, but the argument that discrimination should be tolerated because people might have to pay more for insurance is one that I find disgusting. On that basis, we could discriminate against just about anybody because it might save us a few dollars. I sincerely hope that that argument is not proffered as we continue this debate.

This bill does not deal with the issues of adoption, civil unions, anti-vilification legislation, the defence of provocation, normalising surgery performed upon intersex children, or any of the other issues discussed in the government's issues paper. This bill has properly been the subject of community consultation, and the importance of making those consultations and working with Canberra's queer communities will become evident. It is essential that this type of reform be done properly the first time so that vast numbers of amendments are not required in the future.

In my consultations with Canberra's GLBTI communities I have heard that there were a number of concerns with the government's approach to this discrimination reform. I will deal with these concerns in greater depth in the detail stage, but I will briefly outline some of the problems now.

The legislation inserts into the Legislation Act an overarching definition of domestic partner that will be used to define the meaning of personal relationships for all ACT legislation. Given the extent to which this definition will affect our laws, and in reality our lives, it was crucial that we got it right. The government's original definition was simply that a domestic partnership was "the relationship between 2 people, whether of the same or different sex, living together as a couple on a genuine domestic basis". The definition in the bill is vague and does not provide any solid meaning to members of the public who read it. Secondly, it is restrictive, requiring that two people must live together in order to be recognised, something that is not required of people who marry. The definition in the legislation does not reflect the reality of the relationships of many people in the ACT.

One objective I would like to see this Assembly achieve is to ensure that we are not prescriptive in how we recognise the relationships of our community. The ACT Democrats do not believe that it is the role of government to dictate how people should conduct their personal lives, and we should not be writing laws that fail to recognise the diversity of human relationships, regardless of gender.

It is a key principle of liberal democracy that governments allow their citizens the right to make their own decisions about how to organise their personal lives. The definition as it stands may restrict choices about living arrangements if a couple wishes to be recognised under this law, whether they are of the same or different gender.

A second concern with the government's original proposal is its treatment of transgender and intersex people. Our system of law has historically been very poor at serving those who do not neatly fit into the categories of male and female. The idea that there are two exclusive categories of gender has been challenged quite comprehensively in the last few decades, and there is a growing realisation that this black-and-white way of thinking about people is no longer a real representation of the world. We need to alter our laws to remove this narrow view of gender and begin to write legislation that does not reinforce this narrow view.

One issue in dealing with intersex and transgender people in the legislation is that there appears to be a temptation to force them into categories of male or female. This is definitely not the approach we should be taking. Instead, we should be trying to rewrite our statute books to take into account the full scope of gender or, where appropriate, to remove references to gender altogether.

We need to realise that transgender and intersex people are two entirely different groups that need to be recognised as such. The bill before us lumps these people together without considering how inappropriate this might be. A transgender person is someone who identifies differently to their gender of birth, and there is increasing evidence that

these people may have physiology and functions that resemble their gender identity rather than their birth sex. In other words, a transgender person is someone whose brain sex is quite different from their body sex.

An intersex person, on the other hand, is someone who has a genetic abnormality that means that their sex chromosomes or reproductive organs are not exclusively male or female. Their concerns in relation to government and the medical profession are very different to those of transgender people, particularly in the controversial use of so-called "normalising" surgery performed on children to make their bodies conform to a particular sex, whether or not there has been consent, whether or not that child has had the opportunity to be comfortable with who they are and to make their own decisions about their life choices.

Last week I circulated a number of amendments to this bill based on long consultations with queer communities. I notice that yesterday the government also circulated amendments that bear a startling resemblance to mine. While I am very pleased that the government has been happy to support so many of the ideas put forward, it may have been unnecessary for the government to duplicate in the way that they have. Perhaps in the future we can coordinate our thinking better to avoid this double-up and the confusion it has caused.

The raft of amendments needed clearly demonstrates how important it is to do community consultation before tabling legislation in this place. I understand that this bill was originally going to be tabled as an exposure draft, to try to sort these problems out earlier. Unfortunately, the government decided not to proceed with this option, so we are now faced with a long list of amendments that we will be debating later. Community consultation is important, especially when we are looking at these issues, because the people who know best about the lives they want to live and the discrimination they have been facing are the communities themselves. They live with these issues day to day. We should always be aware of the problems the queer communities in the ACT face. We should be working in this place to end the discrimination they face.

I also wish to speak briefly to some of the comments my office has received about the relationship between this type of reform and the traditional institution of marriage. Firstly, no law of the territory is able to alter marriage laws, as these are the province of the federal government. More importantly, the value and meaning of human relationships cannot be legislated. The social value of marriage is not in marriage laws but in the love, trust and commitment between two people. For those in particular religions, the spiritual nature of their partnership is created by their relationship with their god, not in laws created by parliaments.

The ACT Democrats believe that the role of the legislature is to write laws that are inclusive of all people and reflect the reality and diversity of human relationships in our community. We are a secular institution, and the interpretation of religious morals should be left to the pulpits and not dragged into our parliaments.

The elimination of disadvantage for lesbian, gay, bisexual, transgender or intersex people does not end with just changing the legislation. Numerous government investigations, such as that which produced the Victorian government research paper on queer health,

demonstrate that to produce equal outcomes for the GLBTI community and to address their needs governments need to take into account the different circumstances and social situations that these groups suffer. Equality is not achieved by being blind to sexuality or gender identity differences.

Finally, I wish to thank all the members of the Canberra queer community for the information and feedback they have provided to me and my office in relation to these reforms. I would particularly like to thank Liz Keogh and all the other members of the Good Process group for their ongoing assistance. I note their attendance in the chamber today.

We need to continue GLBTI law reform, and we need to back it up with meaningful resources and programs to get real results for our queer communities. This legislation, while a commendable and an important first step, barely makes a dent in the real issues and the reality of the discrimination that lesbian, gay, bisexual, transgender and intersex Canberrans face today. I hope that the Assembly supports this small first step and that we can work on not just removing discrimination from our laws but removing discrimination from our society.

MR HARGREAVES (10.57): Mr Speaker, when I was 10 or 11, I went with my school to play football in a little township north of Perth called Gingin. After the game I befriended a crippled Aboriginal kid of my age. His name has gone into the mists of time, but I can recall thinking why this kid was sitting by himself when the two teams were somewhere else enjoying a post-match celebration. I sat and spoke to this kid for quite a while. I guess that was my first exposure to ostracism because of a difference. The kid was ostracised because he was Aboriginal and because he was crippled. I felt a discomfort about that.

In my early 20s I mounted a campaign against discrimination against Down syndrome kids. They used to be called mongoloids, you might remember. They were put in metaphorical cupboards because they were different, because they were monsters, because people were scared of them. People had the stupid idea that these kids were monsters. I recall seeing people recoiling from them on public transport. We now know, some 30 years later, that these people are the most affectionate, warm-hearted and innocent people in our society, and we warmly embrace them these days.

It took a long time for those prejudices to be overcome. It took a couple of brave people to stand up on behalf of these people and say, "I am not putting up with this bigotry. We do not have to do it. It is stupid. It is demeaning. It is wrong." That is what we are seeing here today—the ACT standing up and saying, "We are not putting up with this bigotry, this vilification."

Mr Speaker, it gives me great pleasure to speak in support of this legislation today. I believe that the Legislation (Gay, Lesbian and Transgender) Amendment Bill is one of the most significant pieces of legislation we have debated in this Assembly in recent years.

Today the ACT Labor government is introducing a range of essential reforms to the laws

of our territory. We are establishing a new definition of domestic partnership and extending a range of rights and responsibilities to gay and lesbian Canberrans.

The major laws that will be amended by the legislation are the Agents Act, the Bail Act, the Coroners Act, the Crimes Act, the Health Records (Privacy and Access) Act, the Land Titles Act, the Mental Health (Treatment and Care) Act, the Powers of Attorney Act, the Victims of Crime (Financial Assistance) Act. Another 28 pieces of legislation will be amended. Having to amend 37 pieces of legislation shows the depth of bigotry, accidental or deliberate, contained in our laws.

This legislation represents an important first step in the law reform process. However, it should not be the end of the process. Even if this legislation is passed today, gay and lesbian people will still face significant legal discrimination, persecution and vilification.

I have seen evidence of this persecution and vilification in some of the correspondence I have received on this legislation. It has disappointed me greatly that some in our community will resort to insults, hate and bigotry in place of reasoned argument on these matters.

I recognise that some members of our community have deeply held religious beliefs on matters of homosexuality. I know that these reforms will cause concern in some quarters, but I honestly believe these concerns are overstated. I cannot see how extending legal rights and responsibilities to gay and lesbian Canberrans will have any detrimental impact on others.

These legislative changes will not end the world as we know it. They are neither anti-family nor anti-marriage. I firmly believe that it is possible to support strong relationships in families without rejecting less traditional relationships and family forms. It is not anti-family to support non-traditional families.

This legislation is about families. It is not just about gays and lesbians. It is also about their mothers and fathers, brothers and sisters, aunts and uncles, nieces and nephews, children and their friends. All of these people have a stake in these reforms. It is not just the thousands of gay and lesbian Canberrans whose lives will be improved by this legislation. It is the thousands of parents who want their sons and daughters to be able to live happy, productive and healthy lives without having to experience fear, hate, prejudice and discrimination. It is the brothers and sisters who have seen their gay and lesbian siblings struggle with the unfairness of discriminatory laws and who have felt guilty about the unequal treatment that society dishes out.

Every family with gay and lesbian members will benefit in practical and symbolic ways from the passage of this legislation. Overall, the whole community benefits, because this legislation is about fairness and inclusion over exclusion.

One of the urban myths that have been trotted out during this debate is that the legal recognition of lesbian and gay relationships will somehow encourage heterosexuals to choose a same-sex relationship instead. Any thinking Canberran knows that this is rubbish, but we can hope that this legal recognition will prompt many people in same-sex

relationships that were hidden away because of fear of discrimination and persecution to come forward into the community. I certainly hope this is the case. I hope we are creating a more acceptable environment with this legislation today.

One of the reasons the people of Canberra voted for the Labor Party at the last election was that we stand for progressive social reform. They did not elect us to sit here and do nothing. After seven years of conservative government, the people of Canberra elected us to change things for the better. Today we are changing things for the better.

This ACT Labor government supports the right of all Canberrans to live their lives free of fear, hate, prejudice and discrimination. I congratulate the Chief Minister and his department for their months and months of work on this legislation. I also congratulate the officers who work for the Chief Minister for their courage and their strength to do something that has needed doing for many a long year. I also congratulate the brave people in our society who have had the courage to stand up for their rights during this process.

This legislation had its origins in an average ALP branch meeting about three years ago. A rank and file member of that ALP branch took the policy to the ACT ALP annual conference in 2001 and lobbied to see it adopted unanimously as ACT Labor policy. Two years later it is being debated in this Assembly. This is important recognition of the value of grassroots involvement in the Australian Labor Party. It is also testimony to how a single person in a community can see something wrong, find a vehicle for change and have that vehicle deliver change.

I have received many hundreds of emails, letters, petitions and messages supporting this legislation. It is worth supporting. I hope the Assembly will agree with me today.

Mr Speaker, I mentioned at the beginning that I became aware of bigotry and ostracism because of difference at the age of 10. I did not know much about it because I was only a 10-year-old, but it struck me inside as being wrong. Nobody told me that you should not have a prejudice based on race or a prejudice based on disability. Most people in those days had a prejudice, but I knew it was wrong, as I did with the Down syndrome kids in my early teens. Inside my heart I knew that it was wrong. Now in my early 50s I know that discrimination against gays and lesbians, particularly at law, is wrong.

I have quite a number of gay and lesbian friends. I count myself lucky to have those people as friends. I am happy to put it on the public record and say it in public if anybody wants to listen to me.

In closing, I would like to echo the words of the Western Australian Attorney-General, Jim McGinty, during a similar debate in the West Australian parliament a few years ago:

> Social progress is made by people occasionally taking bold steps to achieve new norms, followed by the conservatives accepting those steps after the event.

The ACT Labor government prides itself on being socially progressive. We are in touch with the broad social views in the Canberra community. I commend this legislation most strongly to the Assembly.

MR SMYTH (Leader of the Opposition) (11.08): Mr Speaker, the Liberal Party does not condone the discrimination that this bill seeks to remove—far from it. Our argument is not with the intent of the bill but with its method. I understand that the bill has been drafted to accomplish its intent smoothly. While I acknowledge that it is a neat piece of drafting, it poses a fundamental problem for the Liberal Party and, I believe, the community.

By having a catch-all term "domestic partner", we lump marriage in with other forms of relationship. We believe that there is a valid distinction that sets marriage apart. A bill that does not acknowledge the special status of marriage, regardless of the subject matter or its intent, is not a bill that we feel we can support. But let me repeat that the Liberal Party is fully in favour of removing the discrimination that this bill, in the main, seeks to remove. It is a pity that the drafting imperative causes collateral damage, as it were, by hurting a vital component of Liberal Party philosophy that I believe accords with the general feeling of the community.

I will be moving an amendment in the detail stage that results from discussions with lobbies for this bill and lobbies against it. I suspect that, like all good compromises, it will end up pleasing no one. But that is not the point. In attempting to find a solution that meets the needs of the gay, lesbian, transgender and intersex lobby as well as the needs of the rest of the community for equity and equality before the law, we believe it is important to move our amendment.

I suspect that what I am saying comes as no surprise to most people, given the very strong pro-family and pro-marriage stance that the Liberal Party has always taken. But the Liberal Party is not in favour of discriminations this bill will remove. I suspect much of the debate will be about the definitions and the technique of the bill, not about where the bill will go.

I take issue with Mr Hargreaves' point that suddenly we have a government of aggressive social reform. The Liberal Government, through passing laws on such things as surrogacy and addressing social issues through the poverty task force, was looking at the social agenda and making sure that it moved along. I suspect that the government's bill has more to do with the efforts of Ms Dundas, who has consistently asked questions about it, than any move by the government to make sure that it happened.

Ms Dundas said that this is a first small step. I think that is how we need to start. Yes, it is a first small step, but much of what is written here seems to be a precursor to what is in the discussion paper and assumes that much of what is in the discussion paper will go ahead. People opposed to this bill have said to me that they have some dilemma with the way that the sequence is flowing. On the other side, a large number of constituents from the gay, lesbian, bisexual, transgender, and intersex community have said to me that they are quite happy with the process. This is the dilemma.

Many have made submissions on the issues paper. The Chief Minister said this morning that 300 or 400 submissions have been made. But those submissions have been made on the assumption, perhaps falsely based, that both this bill and the issues paper would be discussed at the same time. There was some indication that that might be the case.

Many in the community have raised significant concerns. I heard Bishop Browning this morning say that he had not had a great deal of time to look at the matter. January was busy for other reasons that we are all well aware of. He would be happy with some delay that would allow consultation on the issues paper before this bill is addressed. A number of people have contacted my office with similar concerns. They made their submissions on the issues paper and now feel somewhat disenfranchised by the fact that we are discussing this bill first.

Much of the language in the bill seems to be based on the belief that many of the issues in the issues paper will be addressed by this bill. That has led to some cynicism in the community and a concern that there has not been a real consultation process. This bill, which we are debating first, sets a framework and the groundwork for something that might happen, when we have not discussed what is going to happen.

There was an expectation in the community that definitional matters would be included in legislation arising from the consideration of submissions on the issues paper. That is clearly not happening today. We are going to make some definitions, and then in the light of those definitions discuss what is in the discussion paper. That is poor process. We should be discussing it all.

After the bill has passed the in-principle stage, as I am sure it will, the opposition will use standing order 174 to attempt to send it to a committee. The outcome of the discussion on the issues paper and the framework within which that discussion would go ahead need to be discussed together, rather than one happening well before the other has been decided.

There are many overlapping issues between this bill and any subsequent bill. Ms Dundas spoke about avoiding a raft of amendments. If we get it right in the beginning, we can make sure that it works in the future.

Consultation has not been handled as well as it could have been. Many in the community are saying that to us. Others believe that the bill should go forward and that consultation has been adequate. That is a dilemma for us. Because some people would like more time to discuss it and to see the issues paper, it is appropriate to send this bill to a committee.

The definitions we come up with today will effect major change in the future. Many in the community fear that some of the definitions are based on a false assumption. I will move an amendment to give them some clarity. If we pass them unamended, a number of things can occur. The first is that much of the bill will conflict with federal law. The federal law has definitions on what is a marriage and what is a de facto relationship. In putting up an alternative model, we are creating conflict that will only end up in the courts. A body of case law will evolve, and eventually the courts will be making these decisions rather than us law makers.

We have an opportunity to get the community together on this. I was certainly keen to get Good Process and the Australian Christian Lobby together yesterday. I think we had a fruitful discussion. The different sides did not agree on a whole lot, but I think both sides were pleased that they were able to have a dialogue. With dialogue, we may come up with something that in the main pleases everyone.

The amendment I will move will leave no doubt as to different sorts of relationships. I think they will be acceptable. They will not set up a hierarchy but rather acknowledge that there are different sorts of relationships. The community understands that there are different sorts of relationships. We have those relationships now. There are those who choose to be married, and there are those who choose to be in a de facto relationship. Our amendment will validate what the community sees.

It is important not to lose the opportunity to remove discrimination from our statute book. I think the government is to be commended on removing discrimination. In his speech, the Chief Minister said:

> The bill amends a number of other acts and regulations that currently are discriminatory, for no real reason of policy, towards people in same-sex relationships or transgender people. In itself this is a step towards achieving equality for all in the ACT community.

We would agree. He went on to say:

> In general, the amendment allows people in same-sex partnerships to be treated in the same way as people in opposite sex partnerships.

We think that is very important. Two issues brought forward by the gay and lesbian community were medical issues and estate issues. It is appalling in this day and age that somebody who has been in a long-term stable partnership with another individual not the same sex is excluded from giving consent for medical procedures and deciding whether life support machinery should be turned off. Because of archaic law, this decision may be made by an aunt or other close blood relative who has not had contact for a long time. We certainly do not want to lose the opportunity to remove that situation.

The other issue is estates. Unfortunately, death comes to all of us. When some people die intestate their long-term stable partners are excluded from inheriting property. Their partners are not acknowledged under the law. It is important that we do not lose the opportunity to remove that situation either. People in relationships may have helped pay each other's properties off.

We agree with the proposal to remove discrimination from the other acts. We would be pleased to see that happen. We would be pleased to see that happen in the Discrimination Amendment Bill also. As I have stated, the dilemma for us is with the definitions. The definitions are very important, because they will have a bearing on the future.

The Liberal Party believes in the removal of discrimination against people on the basis of sex or gender. We are in favour of those elements of the bill. We have some dilemma with the definition lumping in together all the different sorts of relationships. That is why we would seek to amend the bill.

MS TUCKER (11.20): I commend the government and Roslyn Dundas for the work they have put into this legislation. The legislation is long overdue. The Greens have raised these issues in previous Assemblies. Today is an important day for the ACT. We are finally having this debate, and it will be successful.

I did not quite understand from Mr Smyth whether he is supporting the bill or not. I assume he is supporting it. He said that he had some issue with the definition of marriage and the status of a particular form of relationship which is created through marriage.

This legislation acknowledges that all people are entitled to respect, dignity and the right to participate in society and to receive the protection of the law, regardless of their sexual orientation or gender identity. It is the first stage of reforming ACT law to address discrimination on the basis of sexuality or gender identity.

I will not go into all the details, because it has been explained by previous speakers, but I would mention that a review by the Department of Justice and Community Safety of all ACT legislation has identified some 70 acts and regulations that contain provisions that potentially discriminate against gay, lesbian, bisexual, transgender and intersex people and that need amending.

Mr Stanhope, in his presentation speech, indicated that the second stage amendments would address further issues in relation to discrimination in ACT legislation regarding gay, lesbian, bisexual, transgender and intersex people. He indicated that the government would consult with the community and stakeholders before deciding on the most appropriate way to progress these matters and released an issues paper containing a brief survey of issues for the purpose of stimulating community debate. I am interested to know the stage the government has reached in consultations and when further amendments will be presented to the Assembly.

I note what Mr Smyth said about the process and concerns that have been expressed to his office about the timing of this debate and the time that was given for input, which I understand was till May. I have had similar concerns expressed to my office. I do not think it is a good process either. I understand that the government is arguing that this is the first stage and that further consultation will address other issues. Perhaps the government will speak to that. It does not seem a good thing to give the community the understanding that they have a certain time for input and then not respect that timeframe.

I believe that this legislation will play a key role in removing discrimination from our statute and hopefully, ultimately, from our society. In my view, the quality of relationships depends on the care, kindness and love within them. It is not about whether people are of the same sex.

An insidious feature of many of these discriminations is that they have remained hidden to people not directly affected by them. There are numerous instances of the law denying people the consideration and responsibilities that heterosexual people take for granted. For example, if transgender people come into contact with police or the prison system, there are no clear guidelines for determining their gender.

In the Transplantation and Anatomy Act, which applies when people are dealing with the death of their partner, same-sex partners are not recognised as spouses and are therefore not necessarily consulted about decisions related to their partner's body or tissues.

In the Compensation (Fatal Injuries) Act, same-sex partners are not entitled to the recognition or compensation that a bereaved partner in a different-sex de facto relationship would be.

ACT law does not prevent single or lesbian women from accessing IVF. However, a woman who is a partner of an IVF mother would not automatically be recognised as a parent to her partner's child, when a man in a similar situation who is not genetically related to that child would. Same-sex couples are not allowed to adopt children.

These are important issues. I appreciate that some people in our community and perhaps some people in this place will find this legislation difficult to accept. In part, that is why community input is particularly important. Of course, it is important in its own right in identifying the problems.

There will be some who will never agree because of their particular religious views or a particularly intolerant attitude or fear of difference. Those attitudes and fear of their effects at the ballot box should not stop us from removing discriminatory laws.

Mr Smyth said that the gay, lesbian, bisexual, transgender and intersex group were lobbying, and then there was the rest of our community. That is quite an interesting thing to reflect on. It is as if there were this lobby group promoting reform of our law, and then there were the rest. It is not like that. That is fundamental to the problem we are addressing here.

I have done a lot of work in committees on how societal attitudes impact on people whose sexuality is not heterosexual or whose gender is not clear. It is heartbreaking to see what happens to people in our community who are not heterosexual. It is heartbreaking to see what happens to children and young people who are in an emerging sexuality stage of their life and have to deal with hate in our schools. You wonder why children feel hate. Where is it coming from? Obviously, it is coming from the society they live in. It is coming from their families or their peer group.

This issue has never been addressed properly in this place by Liberal governments in the past or by this government. It is something I want to raise again with the new minister for education. We need a proactive approach to this issue in our schools. The research is there. It is not as if we did not know that it takes a very heavy toll on young people.

I remind members—I know I have spoken about this before—of the report from John Howard and Jonathan Nicholas in 1999, *Better to be dead than gay?*. That showed that gay-identified males were 3.7 times more likely to report making a suicide attempt and that the fundamental issues for young people were about non-acceptance, about not feeling they belong anywhere in our society. They are rejected by society. That is the cruellest thing any human being can feel, so we should not be surprised that they are more likely to try to end their lives.

What we are debating today is not about our social responses. It is not about how we deal with this in schools or how we deal with this as a community and a society. It is about law. It is about removing from law discrimination against people who are not heterosexual.

As leaders in our community, by making this law we are taking an important step. We are making an important statement. I am proud of that. It can have an impact on how society as a whole treats this issue. I would like to again commend the government and Ms Dundas for their work. I am still not clear what the Liberals are doing. I am sure they will clarify it. If, as I assume, they are supporting the bill, even though they have some issues with one aspect.

MRS CROSS (11.29): On Friday evening, 27 June 1969, a gay nightclub known as the Stonewall Inn was raided by 43 New York police officers. They had a warrant to search the club because it was selling liquor without a licence. At that time, liquor licences required that men and women be properly attired to accord with their gender. Many, if not most, of the patrons were what we would call today either cross-dressers or in drag. Perhaps some were transgender. It was not only unlawful to run a gay bar, it was unlawful to be in one. It was the law. The club was closed down.

Police reports at the time estimated there were approximately 200 patrons in the club on the night the Stonewall Inn was raided. It was not as if this raid was unusual. In 1969, in New York, gay and lesbian meeting venues were routinely raided. It was not even the first time the Stonewall was raided. What was unusual about the raids on 27 June 1969 was that, for the first time, the patrons fought back.

When news of the raid reached other people in the city, up to 1,000 people gathered outside the Stonewall Inn to lend support to those on the inside. The raid had begun at midnight. By the time it was concluded, some two hours later, 13 people had been arrested and four police officers injured—probably from being scratched, kicked and bitten by the gay patrons.

Mr Speaker, Stonewall is popularly regarded as the starting point of the modern gay and lesbian liberation movement. The movement has had a significant impact on the journey that we here in Australia have also been on and, perhaps in a small way, has led to the legislation we are debating in this house today.

Stonewall was important because, for the first time, the wider community began to debate the oppression of gay and lesbian people. It was an oppression that was supported and enforced through the rule of law. Lest we think that Stonewall rights were a mere aberration in the United States, let me fast-forward to 7 August 1994 in Melbourne. On that evening, almost all of the 463 people, including 130 women, at the Tasty Nightclub, were collectively strip searched and forced to stand together, naked, with their hands above their heads, in a gruelling three-hour ordeal.

An inquiry later found there was insufficient evidence to justify the police action. The police had alleged that their raid was part of the war on drugs, but only eight arrests were made, not all of them drug related. The 1994 police raid on a predominantly gay and lesbian nightclub in Australia cost the metropolitan Victoria Police Department almost $4 million in compensatory damages. On 11 October 1996, Sally Gordon, a Tasty Nightclub patron, won her civil case against the Victorian Police and was awarded $10,000 compensation.

The presiding judge slammed the actions of 39 of the 43 police who participated in the strip search. Judge Ostrowski ruled that the actions of the police involved in the raid exceeded the search warrant and that the detainment and consequent strip searching of each patron on the night was unreasonable, and amounted to assault.

In Australia today, there are many parents with lesbian daughters and gay sons who are victims of social, political and economic oppression. There are still people who must hide aspects of themselves from public view, through fear of disadvantage and reprisals. Doctors in practice and even politicians seeking pre-selection continue to hide their identities. I personally know members of parliament who hide this aspect of themselves for fear of that stigma. Gay people in many communities, particularly in rural and remote Australia, are still obstructed by prejudice in the pursuit of happiness, and in striving to live their lives with openness and dignity.

In case we are led to believe that attitudes have significantly changed here, or in the United States, I wish to make brief reference to a young man named Matthew Shepherd, who was a slightly-built 21-year-old student in Wyoming. In 1998, Matthew was lured from a campus bar by two men. They drove him to a remote area outside Laramie, where he was viciously beaten.

As he lay there bleeding and pleading for his life, he was bound to a fence, in near-freezing temperatures, and left to die. He had been beaten so badly that his limp body, when found, was at first thought to be a scarecrow. His attackers had stolen his shoes and raided his apartment. After being struck in the head 18 times with the butt of a handgun, he remained in a coma for five days, without ever regaining consciousness—and then he died. Matthew Shepherd was murdered because he was gay.

It may be tempting to think that such a thing could not happen here in Australia. However, I remind the house that, since 1990, no fewer than 30 men have been bashed to death in Sydney. This violence does not occur in a vacuum—it is not spontaneous. Homophobic hatred takes years to develop in a community and is cultivated by a culture of fear towards gay and lesbian people. In this regard, parliaments which remain indifferent to this hatred and discrimination are complicit.

Today, Mr Speaker, we end that indifference and complicity. To all those people who still hold attitudes of fear, malice and ignorance towards gay and lesbian people, I say, "Get over it." I am proud to live in a community where we strive to include everyone. For those who are not included, this becomes the urgent business of this Assembly.

MR CORNWELL (11.36): The first thing we should say is that discrimination is not resolved by law. You can pass all the legislation you like, sir, in relation to discrimination and numerous other things. The question is how people feel personally, in their hearts and their heads.

I think it is also true to say that discrimination is often in the eye of the beholder. I will come to that later. I also believe, however, that discrimination should not be used to stifle or silence legitimate debate in a democratic society. Too often, under political correctness, this is exactly what occurs. If you criticise Aboriginals, you run the risk of

being called a racist; if you criticise the women's movement, you are a chauvinist; and if you make a comment about gays and lesbians, you are homophobic, irrespective of the merits or fairness of the case. We have already heard much of this unfounded and, I believe, undemocratic bias, and this denial of free speech, in aspects of today's debate—and no doubt we will hear more.

I am concerned that many of the comments made completely ignore the views of the electorate—the majority of the people out there. Unfortunately, in this chamber, Mr Speaker, the majority of the electorate are generally ignored unless, of course, governments—I use the plural here—need to raise additional finance. Then the majority of the people suddenly assume great importance.

However, in the case of the matter before us today—the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002—I doubt that the majority of the majority of residents really care about the issue—not that they have been consulted to any great degree. As we know, the consultation process took place in December. That is a very well-known month for slipping things through—when everybody is tied up with Santa Claus, Christmas and preparing for a couple of weekends down the coast in January. This is a time-honoured ploy—by governments and by the bureaucracy—to put forward matters of importance to the community when we all know the community is going to be distracted.

I further doubt, however, that the majority of the majority of residents, despite what has been said here, truly really practise the discrimination made so much of by members today. I simply do not believe that they see or practise discrimination in these areas anything like the stalking horse constructed here today in this debate.

However, this lack of concern about the issue—the lifestyles of a minority of their fellow residents—does not mean that the interests of the majority of citizens should be overlooked, or ignored, in this matter. Hence my concern about the legislation and the fact that the matter for discussion was introduced in December—and now I find there were 14 pages of amendments tabled this morning by Ms Dundas; 12 pages of government amendments, delivered to me yesterday at 4 pm, from the Attorney-General—and another 14 pages from the government arrived this morning. We are being asked, members, to rubber-stamp something like 40 pages of amendments because all of us in here justifiably wish to remove discrimination in this area.

I am sorry, but I am not prepared to rubber-stamp them. No matter how justified the motives for this legislation are, I am not prepared to blindly rubber-stamp them. There is a second reason. This is only the first of two pieces of legislation relating to the whole matter. I understand the second piece of legislation will be introduced later this year.

We are being asked to accept this legislation before us today without question, with its amendments, simply because it is the right thing to do. I put to you that we will be failing in our duty as legislators if we do not examine this legislation and the amendments being put forward carefully and thoroughly. I would therefore support any motion to refer this matter to a committee for careful and deliberate examination.

I believe reference to the committee will also give the opportunity to address, in a more detailed way, definitions that have been put forward. This is important because the

concerns some people have relate to the definitions. I would therefore urge members to address this matter sensibly and responsibly. Look, do not blindly commit ourselves to supporting the legislation before us today—some or perhaps all of the amendments. To do so I believe will by inference suggest that we are also accepting the second stage of this legislation.

Again, I am not prepared to blindly accept a second stage of this legislation. I wish to know what we are looking at in detail in this first stage. I certainly make no judgment in relation to the second stage because I believe I have a responsibility, as do the other 16 members of this house, to look at all legislation carefully—and not be driven by emotion, political correctness, or the justifiable righteousness of the proposed legislation. Irrespective of all those things, Mr Speaker, we still have a responsibility to examine the legislation carefully as elected representatives of the 320,000 people who live in this territory. I would urge members to consider and support referral to a committee to enable these matters to be looked at carefully.

MRS BURKE (11.45): I do not have a prepared speech, but I wanted to pick up on a couple of comments Ms Dundas made in opening. To be done properly and done right the first time is of paramount importance to me. I am a compassionate person, with many friends in the gay and lesbian community. I want to ensure that this process is not rushed through, in order that those people inadvertently become more disenfranchised than they are now. Why should we be rushing a bill through so quickly? That is my question. We must protect the rights of all human beings and all individuals, but why rush? What is the rush?

I agree that the government's approach has been questionable. There are people who ring me constantly, from both sides. I am communicating with people from all walks of life on this matter. They say, "I haven't had my chance to have a proper say."

I am very concerned about that. I am concerned that, whilst many in the gay and lesbian community have had an opportunity, many still have not. I am concerned that people who were not understanding what we are trying to do today still do not understand. We are going to have an impact on 37 acts. Do all of us in this place really know the ramifications of each of those acts in what we are going to do?

I am definitely not against working towards equality, for the purpose of the rights of these people being acknowledged. As Ms Dundas said, we must acknowledge the reality and diversity of our community. However, as Mr Cornwell said, we have a responsibility in this place to examine legislation carefully and considerately, considering the people—the very people we are talking about today—and how we could inadvertently make some comment that does more harm than good.

I would agree too that perhaps—could this be said?—it is Labor playing catch-up with the Democrats, I know a lot of work has been done. As Mr Hargreaves said, the government has worked long and hard, but it would seem mostly in camera. I do not know of many forums and opportunities that have been open for people to talk about this. That is why I think the idea of a committee, which has been raised this morning, could be a great idea.

I am not one for reviews and more reviews but, when people's lives are affected, I am. We need to take a step back from the emotion—we need to consider the people we are talking about now. As Mr Hargreaves said, it is about families—it is about mothers, fathers, aunts, uncles, nieces, daughters and nephews.

My cousin and my nephew are homosexual. I live with it. I embrace people whoever they are and whatever they are—they do not need to be discriminated against. We certainly don't need to be rushing into any situation that may harm these people.

I don't believe the broader community has had sufficient time to come to terms with the ramifications of this bill, or even what is in it. As I say, I am concerned that, whilst our intention is to protect the rights for gay, lesbian and transgender people, we may have missed something along the way. Discrimination against any human being is wrong, and that must be addressed. The amendments put forward and the definitions up there must be sorted under law. These people have the right.

I would like to support the amendments put forward by the Liberal Party, in order to ensure the rights of married people, if you like—people's rights on all sides of this argument—so it does not become lopsided, the debates blurred and melded into one.

There are many complexities to the bill. Again, we must do it properly the first time. As I have said, I strongly support the issue going to a committee. Ms Tucker raised a point about further consultation at the next phase. My concern is that, if we set things in concrete right now, will that be too late? Will we have set a ball in motion that we will not pull back on? These are questions I am being asked too, Ms Tucker. This phase, for all concerned, will definitely impact upon the next phase. We must ensure we have the definitions right, to proceed fairly with the deeper issues.

Mr Speaker, I strongly recommend the amendments put forward by the Liberal Party. I urge this Assembly to think about the process going to a committee, so the amendments can be looked at and studied more, in their entirety.

MR CORBELL (Minister for Health and Minister for Planning) (11.51): This is an important reform, but I think it is important to refute some of the arguments from members opposite on process, as well as on key matters of principle.

Firstly, in relation to process, the assertion that there has not been enough time to consider this legislation is simply false. In fact, it is an insult to the 400 people who have taken the time to put forward their views, and made submissions on this legislation, to suggest this is being rushed through, that it is not being given adequate consideration, and that more time is needed.

If others are interested, there is still the opportunity to contribute, but do not devalue and debase the contribution made by those people who have taken advantage of the public consultation process. The Chief Minister tabled this legislation in December last year. In doing so, he made the point very clearly that it was a two-stage process—this bill would deal mostly with technical and procedural changes to remove discriminatory references in existing acts.

The second stage is to look at the detail of the more complex issues surrounding same-sex relationships and how they are addressed under law. That debate will occur for the remainder of this year, so it is wrong of the opposition to say this needs to go to a committee now, or that we need to establish a hierarchy now.

On behalf of the government and personally, the government's view is that there should not be a hierarchy of relationships—all relationships should be treated equally, and should be addressed equally, under law.

Mrs Burke: We are not talking about a hierarchy, but further consultation—it is time for consultation.

MR SPEAKER: Order!

MR CORBELL: Mr Speaker, the Assembly will have that debate when the second stage of the work undertaken by the Attorney-General is progressed. That is when that debate will be had, so don't try to muddy the waters. Don't try to stir up what is very much a technical bill for the purpose of removal of discriminatory language and references within the broader policy issues that are the second stage of the government's reform agenda. We welcome the debate—we are prepared to have the debate—but this legislation does not concern the issues you raise.

The other point I need to mention in this discussion is the notion that political correctness is weighing us down; that political correctness is undermining our capacity to debate this issue rationally. The only people not debating this issue rationally are those who cite political correctness as the reason to avoid engaging in the debate, or their fearfulness of engaging in the debate.

This issue should be debated on its merits and on the principles we all strive to achieve in this place—or those I would like to think we all strive to achieve in this place. Equity, equality under the law, and fairness—that is what the objectives are about. I would be interested to hear Mr Cornwell's argument about why it is fair to discriminate against people simply because they are, for instance, in a same-sex relationship. Let's have the debate on the principle. Don't hide behind political correctness. Don't hide behind that as a reason to not engage in the debate, or feel you are unable to participate in the debate because you will be shouted down. Argue the issue on its principle—on its merits.

If Mr Cornwell sincerely believes it is fair and equitable to see the traditional marriage relationship as above and beyond that of a relationship between two people of the same sex, for example, then let us hear him make the argument. Do not hide behind political correctness. Do not hide behind that whole notion. Argue it on the merits of equity and fairness. That is what it is about.

Mr Speaker, this legislation is important. It is an important first step. The contentious elements are still ahead of us, but I have confidence that the majority in this chamber will see the value, merit, and fundamental fairness which lies beneath the reforms the government is implementing today.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (11.56), in reply: Before addressing the nature of the bill before us today, I will refer back to the process we engaged in, in relation to this law reform issue, last year. There has been some discussion—or statements made around lack of time to engage in the debate. That is a charge I reject.

I might say, Mr Speaker, that it was early in 2002—around about this time last year, within months of coming into government—that I asked the department to undertake a review or audit of all legislation on the ACT's statute books, with a view to identifying the provisions within ACT legislation which discriminated against people in same-sex relationships—or gay and lesbian people.

That direction occurred—I do not remember the debate specifically—around this time last year. It was a massive task to look at every piece of ACT legislation—some thousands of pieces of ACT legislation—in the context of acts, regulations, and other legislative instruments, and to seek to identify all of those which discriminated against gays, lesbians, transgender or intersex people.

At this stage, I will acknowledge that the burden of work within the department in relation to this major law reform project has been undertaken by Bronwyn Leslie and Francis Brown. I acknowledge the enormous contribution they have made to this particular law reform process. It has been a magnificent effort of work.

It was further towards the middle of the year, when there had been some progress on that, that I announced that the department had identified about 70 pieces of legislation which directly discriminated against people in same-sex relationships, all of whom were gay and lesbian. I then announced that we would legislate in relation to the more straightforward discriminatory provisions, and that we would pursue a process in relation to those not so straightforward issues. It was as a consequence of that that I tabled this bill, as Mr Corbell has just said, in the first or second week of December last year. At the time, in the tabling speech—I quote from the *Hansard*—I said:

> Because of the number and range of issues identified in the review, amendments to address discriminatory aspects of ACT legislation will proceed in two stages. This bill forms the first stage of this process. It contains the more straightforward amendments.

I go on to say:

> The issues paper that I will be tabling today canvasses questions about the way ACT law deals with gay, lesbian, bisexual, transgender and intersex people. The paper forms part of the second stage of the government's law reform process aimed at addressing discrimination on the basis of sexuality or gender identity. The aim of the issues paper is to ensure that policy development on those issues takes into account community and stakeholder views. The government will consult on these issues before deciding on the most appropriate way to progress these matters, and the issues paper is intended to serve as a focus for that community consultation.

The process we were engaged in was quite explicit, at the outset. I believe it has been an excellent process, managed in an excellent way by the Department of Justice and

Community Safety, and indeed by the responsible project officers—Bronwyn Leslie and Francis Brown.

Once we are through this legislative phase, Bronwyn and Francis will develop a government response to issues raised in the consultation on the issues paper. Our expectation that the paper will be available by May has been indicated. I will table it in this place, and it will be a further focus on the issues yet to be dealt with through this law reform process. At this stage, as I have pointed out, the government has not committed to a position on the other range of issues.

As I say, the Legislation (Gay, Lesbian and Transgender) Amendment Bill is the first stage of a law reform process to address discrimination on the basis of sexuality and gender identity in the ACT. It contains the more straightforward amendments. The purpose of the bill is to include definitions of domestic partner, domestic partnership, and transgender person in the Legislation Act 2001. These definitions will then be used consistently across all ACT legislation, except in rare instances where there is a special need to distinguish between different types of relationships.

The schedule to the bill makes a number of changes to various acts and regulations, to apply these consistent definitions. The provisions amended by the schedule are the straightforward matters. The more complex matters will, as I have just explained, be addressed at a later stage.

While the amendments made by the Legislation (Gay, Lesbian and Transgender) Amendment Bill were not specifically raised in the issues paper, I have received a considerable amount of correspondence about the introduction of the term domestic partner and domestic partnership. In other words, many people have taken the opportunity to address the issues contained in the bill we are debating today.

There has been considerable community interest in and response to the issues, including the issue around the introduction of terms domestic partner and domestic partnership. I make the point though, as Mr Corbell did also, that somewhere between 300 and 400 people have taken the opportunity to comment not just on the range of issues raised in the issues paper, but indeed on the legislation we are currently debating. Between 300 and 400 groups and individuals took the trouble—made the effort—to make their views known on these issues.

Many people have expressed concern that the use of the inclusive term domestic partner will somehow mean that we will no longer talk about husband and wife, or spouse, and that marriage as a legal and social concept will be swept aside. That is not the case. What we are doing is introducing a term that is inclusive of all kinds of domestic partnerships, where two people have made a commitment to each other to share a life.

This new term has the advantage of not being tied to concepts of marriage, with its implication that one of the people in the partnership will be a man and the other a woman. Unlike the approach taken in some similar legislation, such as the New South Wales Miscellaneous Acts Amendment (Relationships) Act 2002, we are not redefining spouse to include de facto and same-sex relationships. Instead, these new definitions take a different approach, to avoid the artificial stretching of the meaning of spouse—in effect

deeming a person within a same-sex relationship to be either a man or a woman. The New South Wales approach I think is the age-old deeming approach. If you find something a little difficult to deal with, then just deem someone or something to be something they obviously are not.

The new definition of domestic partner helps to ensure that spouse and marriage retain their proper meanings, by replacing interpretive provisions such as spouse includes a de facto spouse. Spouse is included under the more general term domestic partner. The inclusion of spouse under the more general term domestic partner in the bill does not affect the meaning of spouse at all. Spouse continues to have its ordinary legal meaning of a husband or wife.

Similarly, marriage continues to have its ordinary legal meaning as the union of a man and a woman, to the exclusion of all others, voluntarily entered into for life. The new definitions do not affect the current operation of any legislation that is not amended by either bill. Nor do the definitions preclude the use of specific terms such as spouse in any future legislation the Assembly may choose to pass.

In order to make it clear that we want to retain the current well understood meaning of spouse, I am moving an amendment today that will insert a note to the definition of domestic partner, stating that spouse means a husband or wife. I am also moving an amendment to insert an explanatory example in the definition of domestic partner.

I am aware there has been some discussion about the approach taken in this definition, in describing the kinds of partnerships to be covered. It is not the intention of the government, in this first stage of reforms, to make major changes to the way legislation treats relationships. The policy we are seeking to express is that couples who have made a genuine commitment to share a life together should be treated the same, no matter what the sex of the partners may be.

Most legislation already recognises heterosexual partnerships where a couple live together but are not married. This bill simply extends that recognition to all partnerships, regardless of the sex of the partners. The definition of domestic partnership is simple and inclusive. It means the relationship between two people, whether of the same or different sexes, living together as a couple on a genuine domestic basis.

Some people have preferred the approach taken in other jurisdictions of including a list of indicators of whether or not a couple are in a partnership. I believe the form of definition in this bill provides a better, more flexible approach to defining something that may have many forms of expression.

I quote from the second reading speech made by the Victorian Attorney-General, Rob Hulls, in November 2000, in the debate on that state's Statute Law Amendments (Relationships) Act, as it seems to me to express the position of this government precisely. Rob said:

> The government does not think it necessary to legislate in minute detail for the interpretation of what it means to live with someone as a couple on a genuine domestic basis. There are a number of factors which can be considered, such as the

> degree of mutual commitment to a shared life, the duration of the relationship, the existence of a sexual relationship, the care and support of children, the nature and extent of common residence, the ownership, use and acquisition of property, the degree of financial dependence or interdependence and any arrangements for financial support between the parties, and the reputation and public aspects of the relationship. None of these are determinative in themselves, nor are they all relevant in every case.

The Victorian act uses a similar definition to the one in this bill. Mr Hulls went on to say:

> Although the principal definition of domestic partner assumes cohabitation, this is of course to be interpreted reasonably. Domestic partners will not lose their status as a couple just because, for example, one partner has been in a nursing home for a time—be it months or years—before they die, or the couple live in different states or even countries for a time because of work requirements, or the myriad issues which may lead a couple to spend time apart, while remaining a couple who share their lives.

I do not consider it necessary, as some people have suggested, to have a provision stating that living together is not necessary in order for a couple to fall within the definition of domestic partnership. ACT legislation does not currently recognise opposite sex couples who do not live together as being de facto spouses. I think this is an important point—the fact that our legislation does not currently recognise opposite sex couples who do not live together as being de facto spouses. The definition in the bill treats a same-sex couple who do not live together in the same way as we currently treat opposite sex couples who live together.

The expression "living together as a couple on a genuine domestic basis" has been considered by courts and is well understood. It is clear that it must be considered as a whole phrase. Some judgments specifically reject the suggestion that it should be dissected into component elements. In some circumstances, a couple who do not share a common residence may still be able to show, through other indicators, that they fall within the definition.

A court will be able to take all the circumstances into account and will not be restricted to a legislated list of issues in deciding whether two people are in a domestic partnership. In order to assist the court, and to make it clear that the definition is intended to be interpreted broadly, having regard for a number of factors, I am moving an amendment to insert an example list of factors into the definition of domestic partnership. The example will aid interpretation but will place no restriction on the court in deciding whether particular circumstances fall within the definition.

I will also be moving amendments to address some difficulties that have been identified with the definition of transgender person. While this definition has been taken directly from the Crimes (Forensic Procedures) Act 2000, and is in fact used as a standard in many jurisdictions, it seems that some improvements can be made.

Ms Dundas has foreshadowed that she is moving exactly the same amendments. Mr Cornwell, you will be pleased to know that the 40 pages of amendments are, in fact,

12 pages of amendments. Mine were circulated twice—it is the same set of amendments. Ms Dundas's amendments are in fact identical to those of the government.

Mr Smyth: Or are yours identical to hers?

MR STANHOPE: Look, this is government legislation.

Concern has been expressed that the definition of transgender person should not reinforce the binary notion of gender by referring to a person identifying as being of an opposite sex. By doing so, the definition does not take account of the fact that there are some transgender people who do not identify as either male or female. To address this concern, I will be moving, and have circulated, amendments to the definition of transgender person to substitute the expression of "different sex" with the expression "opposite sex". The amendment will directly address the issue of perpetuating the use of "sex" in only a binary way. This amendment will have the added advantage of making the definition of transgender person consistent with the definition of domestic partnership. That is also expressed in the context of the question whether they are of different sexes or the same sex.

The government has also received advice from intersex advocacy and support groups that it is inappropriate to include intersex people under the general definition of transgender person, as the two are quite different. While including special provisions for searches of transgender people as appropriate, the government has been advised that there is no need for similar provisions for intersex people. We are moving amendments to address that concern.

The government amendments also address the fact that it is not always appropriate for a transgender person to be searched by a person who is of the same sex as the sex with which the transgender person identifies. Depending on the individual transgender person's circumstances, they may or may not feel comfortable being searched by a person of the same as their identified gender. *(Extension of time granted.)* For example, a female-to-male transgender person may feel far less threatened if searched by a woman.

There may also be circumstances where a transgender person does not identify as either male or female, where it may not be possible for such a person to be searched by a person of the same sex. To address this issue, the government amendments that I will be moving, include amendments to provide that a transgender person may nominate whether they wish to be searched by a male or a female.

While this is a departure from the general policy that a person should be searched by a person of the same sex, I believe it is justified in the case of transgender persons, because of particular issues body searches may pose for a transgender person.

In conclusion, Mr Speaker, the government is keen to proceed with this legislation, and we are thankful for the range and level of support we have received for the legislation during this debate today. I acknowledge that there are other views around the definition of domestic relationship and how best to proceed to achieve the reforms we are seeking to achieve today. Ms Dundas has a different approach—far broader than the approach being pursued by the government. We believe it is an approach that affects basically notions around domestic relationship, as currently apply to heterosexual relationships.

The government's position in relation to that has always been that this first tranche of reforms was to deal with the more straightforward, less complex and less controversial issues of law reform in relation to these issues. We believe that the proposal being pursued by Ms Dundas in this instance would be better left for the second round of reform, to be facilitated through the government's response to the issues paper.

I will conclude but, for the sake of completeness in this debate, in that context the topics included for discussion and consultation in the issues paper go very much to matters previously mentioned in relation to issues around unions; the nature, prospect or circumstances where the law might recognise a union between persons of the same sex—lesbians and gays. It goes to the range of issues in relation to parenting rights—issues in relation to adoption, surrogacy and the availability of IVF.

This is a broad range of complex issues which go to those areas where the ACT government does not have legislative or constitutional authority and the extent to which we, as a territory with constitutional limitations, can respond to areas of Commonwealth law that discriminate blatantly against gay and lesbian people and how we, as a jurisdiction not prepared to simply accept such discrimination, can respond. The most current and relevant example of that is the Commonwealth's blatant refusal to accept a reference from the states in relation to de facto marriage, or to accept a reference as it affects people of the same sex and the consequential or knock-on discrimination flowing from that, particularly in relation to issues such as superannuation.

These are some of the issues that I would hope will be pursued by this Assembly, and by this community, in a further and robust community debate and engagement on issues that will be synthesised by the department in the government's response to the issues paper and the large range of submissions we have received on it.

I acknowledge, as I say, that Ms Dundas would pursue a different definition of domestic relationship—that essentially her position is one of acknowledgement that this is an area of law reform that we need to progress, and today is the day for that to occur.

Mr Smyth has foreshadowed an amendment. I will say more on it in the detail stage, but Mr Smyth's amendment goes to the same issue of the definition of domestic relationship. Ms Dundas would broaden the definition and Mr Smyth would narrow it. These are valid points of view, and they can be legitimately put. However, I am pleased that, as I understand it, there is a strong consensus of view today around the legislative package the government has presented. I look forward to its passage.

Question resolved in the affirmative.

Bill agreed to in principle.

Reference to committee

MR STEFANIAK (12.17): I move, in accordance with standing order 174:

> That the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002 be referred to the Standing Committee on Legal Affairs for inquiry and report by the first sitting day in August 2003.

Mr Speaker and members, I think one has to ask what is the absolute urgency of this being dealt with now. There are a number of major issues that need looking at and testing out—a committee will do that. The obvious committee is the Standing Committee on Legal Affairs. That is the appropriate committee to look at a bill such as this. In fact, it is currently getting submissions in relation to another bill with a number of contentious issues—that is in relation to industrial manslaughter.

I do not think I have received so many letters from interested parties in relation to this piece of legislation, and indeed the discussion paper, than I have since one of the abortion debates. The amount of correspondence I have received is probably greater than some of the other times the issue has come up. The correspondence has not been all one way—there are a number of people who have asked, in their correspondence, why this can't be looked at properly. They have made a suggestion: why doesn't an Assembly committee look at this issue?

Indeed one of the groups which will be affected by this—I think it was someone writing on behalf of the transgender group—indicated they did not feel they had been consulted enough. They wanted the opportunity to address the issue and they specifically suggested: is a committee going to be looking at that? Is there some way we can have our say?

So it is not only on one side of the issue that people would like to see this go to a committee—there are a number of other important issues. There is also the fact that other people have asked, "Why are we doing this now, when we have an issues paper out as well, which the government is not going to report on until May? What is the rush to do in doing this now, when we have stage 2—or perhaps some other issues in the issues paper that should be looked at? Why isn't it better to do it all at once?"

Mr Jim Wallace is one person who comes to mind. Former Brigadier Wallace has asked several times, "Why can't this all be done at once—surely that would be more logical?"

I would ask: what is the harm in sending this to a committee? Other people have raised some significant issues—I have not had a chance to go into those fully. One is what effect the legislation that is likely to be passed today, if it goes through today, will have—and what consistency it has with various pieces of federal legislation, such as the Marriage Act and the Family Law Act. Those are other issues I believe we need to look at properly, to ensure that whatever comes out of this process works and is not going to get bowled over in the first court case in which someone takes it on.

There were some crucially important issues raised by a large number of my correspondents—I think the Attorney raised this. They raised significant issues around such things as the sanctity of marriage—issues that go to the very foundations of our society. When many of these people say, "We want a chance to be heard," they specifically mention that this is something important, which should go to a committee. That is good consultation. It is proper consultation on major issues—and these are major issues.

These are fundamental belief issues for a number of people, and they are fundamental issues of discrimination for other people who feel there are some areas in this bill which offer them great potential. There is great potential there, yet they want to have their say. They do not feel that, to date, they have had a chance to do so. An Assembly committee inquiry would do all that.

I think it would be somewhat hypocritical of this Assembly if the majority does not agree to send something as important and contentious as this to an Assembly Committee, to look at all the issues that have not been looked at to date. I believe that would complement very nicely the outstanding issues in relation to the paper issued by the Chief Minister and on which people are still making submissions. I commend the motion to the Assembly.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (12.21): The government will oppose the referral of this matter to an Assembly committee.

As I explained before, it is not as if this law reform proposal were dropped on the Assembly without notice, or as a surprise. As I indicated before, in around March last year, I asked the department to undertake a full audit of all legislation on our statute books to identify laws discriminating against same-sex partners—gays and lesbians or transgender people—in the ACT.

The Assembly was aware of that. Indeed my colleague, Mr Hargreaves, moved a motion in private members business, when these issues were discussed. The government set out its commitment to progressing law reform in relation to these areas. As I said before, shortly after that, I announced a process. We agreed to a process, we drafted legislation and we tabled the legislation in December. I am now advised that the legislation was tabled on 12 December—three months ago. On the same day, a discussion paper was tabled and widely disseminated.

Mr Stefaniak has just said that the only other issue on which he can recall a similar level of representation was the abortion issue. Mr Stefaniak concedes in that statement that the consultation process was effective and that he has received, in the term of this government on this matter, a number of representations second only to the abortion debate. That is, it is either equal with or second only to abortion, in the term of this government. That is in 15 or 16 months.

To that extent, more people have made their views known to you on this subject than on any subject other than abortion. Yet you stand up here and say there has not been an opportunity to consult. This matter has been sitting on the table. I set out explicitly the government's attitude to a two-phase reform process—one was those matters, and many are matters of unintended or petty discrimination.

We are not dealing here with groundbreaking legislative change that is going to change the nature of society or strike down marriage. There is a second phase of reform. As I say, in relation to that, the government has not declared a position. We are supportive of the reform process and we have issued a discussion paper which not only raises the issues but stimulates the possibility and prospect of debate across the board.

We have seen some of that. There is a range of views around traditional notions of marriage, particularly marriage between a man and a woman, as being the only legitimate form of relationship, marriage, or partnership that we should support. I have received letters and representations as well. They are issues we will deal with down the track.

Look at the legislation and the nature of the issues we are dealing with today. We are dealing with an amendment to the Health Records (Privacy and Access) Act 1997 to allow a domestic partner—that is now to allow somebody in a same-sex relationship—to have access, perhaps in moments of crisis, to their partner's records. Why do you want to refer that to a committee?

Take somebody who has been living in a relationship with somebody of the same sex for 20 years. In a moment of crisis, the person's life is threatened, or their health is at enormous risk. At the time, they can't have access to that person's health records, for the purpose of making the decisions that need to be made by a loved one. You need to look at what we're doing today. That is petty discrimination.

Mrs Burke: We do. That is just what we are doing—touché!

MR STANHOPE: You have not looked. My point is that you have not looked to see what it is that we are doing today. We are dealing with 37 pieces of legislation. We are essentially removing outdated, petty, discriminatory provisions which impact on a significant group of our neighbours, friends and fellow residents of this city.

Go through the list of legislation we are dealing with today. go through the list of amendments we are making, and just ponder that you do not want to proceed with an amendment to the Health Records (Privacy and Access) Act which, in those circumstances, allows access to a partner.

We are making an amendment to the Land (Planning and Environment) Act—the PALM Act—to be inclusive of people within same-sex relationships. We are making an amendment to the Legal Practitioners Act because, at the moment, there are certain issues in relation to what a lawyer, I think, can tell their spouse in relation to the keeping of records by legal practitioners.

Look at the change to the Liquor Act and the issues in relation to periodic detention and searches. We are amending the Pharmacy Act and the Powers of Attorney Act.

The amendment to the Powers of Attorney Act is shocking. It imposes an obligation on people in same-sex relationships which they currently do not have. It requires of them the same standards that apply to heterosexual couples.

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 12.28 to 2.30 pm.

Visitor

MR SPEAKER: Before we move to question time, I would like to acknowledge the presence of Mr Kaine in the gallery.

Questions without notice

Land rates—new system

MR SMYTH: Mr Speaker, my question is to the Treasurer, Mr Quinlan. Peter Jansen, the President of the Property Owners and Ratepayers Association of the ACT has labelled the government's draft rating system as a "huge rip-off" and a "con job" which would lead to a situation where "eventually one neighbour could be paying double the amount of rates of the next neighbour". Is the government introducing this discriminatory ratings system to prop up a "pretty crook" budget?

MR QUINLAN: Yes, I did meet with Mr Jansen, a former Liberal candidate for this House of Assembly. We had a fairly civil meeting and I think Mr Jansen came to the startling discovery that if you did not tinker with the rating system—either the proposed or the past rating system—in some way each year, the rates could skyrocket, and that certainly is the case. It has been the case that the formula for the levying of rates has been tinkered with for quite a number of years, and has caused some quite differential results.

Mr Smyth used the word "inequitable" or "discriminatory". There have been some quite discriminatory outcomes from the previous system. The last time a Liberal government changed and levied rates, I think we had a 9 per cent increase in the rates in the suburb of Narrabundah while there was about a 1½ per cent decrease in the rates of the suburb of O'Malley. These were quite unsatisfactory results. So the government is certainly moving to introduce some equity into the system. Certainly, the system proposed will create a situation where some people living cheek by jowl will pay different levels of rates down the track, as they do now—some people get a rates rebate remission; some people are on rates deferral. Those things happen now.

The proposed system is designed to protect people who live in a given suburb and want to stay in that given suburb and not be rated out of that given suburb, as has happened under the prevailing system. But theoretically—and I will have to concede that Mr Jansen is right—the rates take could increase at a greater rate than the CPI, as it could under the system previously used by a Liberal government, as it could under any system. Every year the government of the day has made a decision to adjust the rates formula, both the fixed amount threshold occasionally and the rate itself, the multiplier, in order to achieve a result—an unsatisfactory result, I have to say, and a result that has previously caused people that I know to be effectively rated out of the house and the premises they would prefer to stay in amongst friends and a network that they have built up.

So, yes, we are building a system that will provide for a rebate that will accrue and increase as people stay in the same place. If you happen to live in a suburb which is a fairly run-of-the-mill suburb today and somehow tomorrow it becomes desirable and the

land values start to skyrocket, as they have from time to time and place to place in the ACT, you will be protected from the quite negative fallout from that process.

MR SMYTH: I ask a supplementary question. Treasurer, I did not use the word "inequitable". Is it equitable or fair for leaseholders not receiving concessions who live next door to each other to pay vastly different levels of rates for the same value property and the same services, simply because one resident has lived in the suburb for longer than the other?

MR QUINLAN: I seem to think so. Certainly, under previous systems people living in different suburbs have paid different rates for the same level of service. People will make a conscious decision to buy into an area because of its relative desirability and the utility of possibly living close to town or whatever. I am very happy to be discussing this system now because I think it is and will be a step forward in terms of fairness.

There are people who have lived for many years in the suburb of, let us say, Deakin—I know some of them—whose rates have increased because land values have increased. They are people on modest incomes but they happen to be asset rich because of their house. They can be protected somewhat because of rebate or deferment—not many people opt for deferment at this stage. But at the same time there are people moving into areas like Deakin because they want to live in a desirable area and because Deakin has an amenity and an appeal for them. I think that because they have made a conscious decision today to move into the desirable area of Deakin they should pay the rates associated with the value of land there. I am happy to defend this system in any forum you like because I think it is a far fairer system than the one that was applied in the last days of a Liberal government.

Bushfires—resident survey

MS MacDONALD: My question is to the Chief Minister. Yesterday's *Canberra Times* reported on a survey, undertaken on behalf of the government's bushfire recovery task force, of householders affected by the disastrous January bushfires. Can you tell the Assembly the purpose of the survey and report on its principal findings?

MR STANHOPE: Market Attitude Research Services (MARS) was contracted by the government to help the task force identify specific future housing needs of people affected by the bushfires and to assist the task force develop effective responses to the needs of the people affected.

Householder response to the survey was particularly positive, with all of those involved being very ready to be interviewed and to assist the bushfire recovery task force in determining ways forward. In total, the residents of 470 destroyed dwellings within metropolitan and rural areas were covered by the research project. MARS interviewed 403 residents of destroyed dwellings.

The first of the key findings from the survey was that almost six in 10 home owners and dwelling renters who had their dwelling destroyed intend to return to the suburb in which they lived prior to the fire. Of the 403 households interviewed, seven in 10 were owners of the homes destroyed. That is, 274 of the dwellings destroyed were owned. About three

in 10 households (29 per cent) were renting the dwellings (118 dwellings). The remainder (10 dwellings) were households living rent free as managers of community facilities or were tourist visitor households who lost their caravans in the bushfires. For the 118 householders renting their dwellings in the bushfire-affected areas, around half the dwellings were rented from private landlords, 62 dwellings were owned by the ACT government and two dwellings were rent free.

Based on interviews with these householders, the following major outcomes emerged. Over four in 10 of all bushfire-affected households intend to rebuild on the same block of land. Over one in 10 of the households affected intend to rent in the same suburb. Over two in 10 (24 per cent) are unsure but have indicated that they are likely to remain in the ACT. Ten per cent of households will rent elsewhere in Canberra. One per cent of households are keen to move out of the ACT and rent elsewhere. Six per cent of households intend to purchase or build elsewhere in the ACT. Two per cent of households intend to purchase or build elsewhere in Australia.

The second finding of the survey was that around half of the dwellings currently planned to be rebuilt may be larger in size than the original dwelling.

The third finding was that most householders currently have interim private dwelling arrangements, but around one 20th of all affected householders may require ACT Housing interim arrangements within the next 12 months.

The general conclusion to emerge is that 7 per cent of all bushfire-affected households (equating to 33 households) may require ACT Housing rental accommodation assistance at some time in the next three to 12 months once their current interim accommodation arrangements are extinguished.

Key finding 4 was that useful information sources to assist bushfire victims were identified, but further effort is required. The most useful and effective information sources in the minds of ACT bushfire victims have been the recovery centre, the *Canberra Times* and other print media, the Bovis Lend Lease seminars, and friends and colleagues.

Research also found that ACT Housing may be required to have up to 40 vacant dwellings available during the next 12 months to cater for bushfire-affected households requiring further interim housing accommodation arrangements once their current arrangements are extinguished. In addition, 17 households currently in ACT government housing believe their interim ACT Housing arrangements may need further extension.

I am very pleased to be able to inform the Assembly of the recommendations that arose from those key findings. The bushfire recovery task force had anticipated many of the issues. It had already acted on, or responded in part or in full to, the issues raised in all four recommendations. We are very mindful, for instance, of the need for clear and complete communications and the need to ensure that all of those affected by the fire are included very firmly within information loops. To that extent, we have developed a communications strategy which we are continuing to enhance and refine. Recently the bushfire recovery task force engaged the services of a private public relations firm to assist them in ensuring that our communications are as full as possible.

That is over and above the weekly newsletter that is already being distributed to all affected households, indeed all residents of the affected suburbs; the biweekly advertisements in the *Canberra Times* informing all residents of all the initiatives that are currently being pursued; the arrangement between the bushfire recovery task force and the *Canberra Times* to run a frequent—I believe daily—billboard; and, as I have mentioned previously, the very frequent information evenings that have been conducted by the recovery centre and by Bovis Lend Lease.

ACT Housing has worked vigorously to ensure that we restore destroyed houses as soon as possible. My colleague Mr Wood has spoken at length on that. In addition, ACT Housing has developed strategies for ensuring that those people who are looking to ACT Housing for short or medium-term accommodation are catered for.

Another issue is whether the ACT building and development sector can ensure that those who wish to rebuild will be able to rebuild in a timely fashion and in accordance with timetables they set for themselves. The bushfire recovery task force has given enormous energy to this issue, under the leadership of task force member Mr Terry Snow. Assurances continue to be received from all sectors of the local industry—the MBA, the HIA and industry leaders—that they believe they have the capacity, and certainly the determination, to ensure that all those wishing to rebuild will not be thwarted by shortages, to the greatest extent that we can deal with that. It is a subject uppermost in the minds of the bushfire recovery task force and the industry generally.

Homosexual advance defence

MRS CROSS: My question is to Mr Stanhope in his capacity as Attorney-General. Mr Stanhope, homosexual advance defence operates so as to diminish the criminal responsibility of people who kill gay and lesbian people. Are you aware of this legal defence, and do you think it adequately reflects a proper construction of the notion of diminished responsibility in murder trials?

MR SPEAKER: Order! That is calling for a legal opinion. The Attorney-General may wish to respond, but he is not obliged to.

MR STANHOPE: Mr Speaker, I think there is an answer I can usefully give that will not trespass on the giving of legal opinion. Mrs Cross has asked a very current and timely question: the issue of the gay panic defence and its interrelationship with the defence of provocation.

Indeed, the question is related to some extent to the issue that was under discussion this morning, which may form part of the second phase of a law reform package in relation to issues affecting same-sex people—gays, lesbians and transgender people—in the ACT. I can inform Mrs Cross that the Department of Justice and Community Safety is reviewing the law of provocation as part of the progressive reforms of ACT criminal law and the adoption of the Model Criminal Code.

The Model Criminal Code recommends that the defence of provocation be abolished, in the sense that consideration should be confined solely to the sentencing process. The

defence of provocation has attracted a great deal of criticism, with a number of law reform bodies calling for its abolition.

There has been a great deal of concern regarding the defence since the High Court case of Green and the Queen, which contained a comprehensive discussion on the availability of the defence of provocation in the circumstances of a non-violent homosexual advance.

These issues are covered in the issues paper prepared by the government on gay, lesbian, bisexual, transgender and intersex people in the ACT. As I indicated this morning, the issues will certainly be covered in the report which the department of justice is preparing, with the proposal that we table it in about May.

It is a serious issue and one that we have raised in the discussion paper. It is an issue we will respond to in the government's response to the issues paper, and I anticipate the government will be proposing further amendments in relation to it in the second tranche of our reform package on discrimination against gay and lesbian people.

Mrs Cross, it is one of the outstanding issues in relation to discrimination against gay and lesbian people and one we need to concentrate on as we continue to consider these issues over the rest of this year. It is timely that you have raised this important issue in the Assembly today.

MRS CROSS: Chief Minister, I think you have already answered this, but I will ask it anyway. Are you aware of the High Court case of Malcolm Thomas Green and the Queen, and can you advise the chamber whether homosexual advance has application in the ACT?

MR SPEAKER: That is clearly a request for a legal opinion, too. They are not permitted under standing orders. The Chief Minister might wish to respond to it—it is up to him—but he does not have to.

MR STANHOPE: Yes, Mrs Cross, that is a decision of the High Court and it does have application in the ACT. The gay panic defence—the matter discussed in Green and the Queen—as a consequence of Green and the Queen and the decision of the High Court—is potentially available in the ACT at this time.

It is anomalous; there is no doubt about that. In law that applies in the ACT, it is on the agenda as part of the issues papers. It is an issue to which the government will respond in May. I look forward to further debate on it with members of the Assembly.

Totalcare

MR CORNWELL: My question is to the Treasurer, Mr Quinlan. Is it true that the roads and engineering maintenance units at Totalcare will be closed on 30 September this year, with the loss of many jobs?

MR QUINLAN: The answer to that is—how do I put this?—possibly. I shall skate on thin ice in terms of giving government policy in the answer to this question.

MR SPEAKER: You cannot be called upon to announce executive policy.

MR QUINLAN: No.

MR SPEAKER: What you are doing is your own business, I suppose, as a minister.

MR QUINLAN: Thank you, Mr Speaker. Let me say in a general sense about particular portfolios I have inherited since the Labor government came to power that I really have inherited some issues that should have been addressed some time before that date, but had not enjoyed any scrutiny. It is certainly the case that Totalcare as an organisation has made recorded losses. That has been discussed in this place before. It is certainly also the case that this government, at least, takes its responsibilities seriously and will set about the process of making sure that we operate all of the functions of government in the most effective and viable manner.

We will be announcing an implementation group that will look at Totalcare. Totalcare has been reviewed and reviewed and reviewed and nothing has been done. I do not shy away from the responsibility, but I also accept that this is a very difficult job to undertake because there are so many people and their livelihoods involved. It would strike me as the ultimate irony that a Liberal party would want to make any political capital out of any work that the government does in relation to Totalcare, given the various stages and the evolution of the situation at Totalcare.

This government will be setting up a group of people, involving Totalcare management, staff and the unions, with a view to ensuring that the various functions of Totalcare that government needs to be provided are still provided and provided in the most efficient and effective manner and that the livelihoods of those people directly involved are not jettisoned overnight. We will be working towards trying to ensure continuation of employment or retraining and redeployment of all people in functions that may be either reduced or eliminated in terms of the public sector operations, the detail of which I cannot give you because we are putting the people who know the detail of what is done in charge of the process. But we are working towards making sure that we do have an effective process—and not before time, Mr Cornwell.

MR CORNWELL: I have a supplementary question. Mr Quinlan, I understand why you cannot say when you will put it into place. Can you give me a time scale, however? We are dealing with 30 September at the moment. Can you give me a time scale to assist these workers into new jobs because, frankly, I think 30 September is leaving them dangling in the breeze for a considerable amount of time without any care rather than Totalcare?

MR QUINLAN: Very droll! I can only repeat what I said. You talk about leaving people dangling. The cynical way that Totalcare was managed before this government was elected was, I think, one of the disgraces of the previous government. As I have said, it does represent a very difficult task. It is not a task that I think ought to be made light of, because people's livelihoods are involved in this regard.

There are areas in Totalcare that are not competitive, and they are not competitive in large part because conditions in the private sector have been broken down. Under the

Peter Reith and Tony Abbott approach to so-called workplace reform, we now have casualisation of the work force and we now have elimination of security of tenure—and it is no joke, let me tell you. It is not just those poor workers. It will turn out to be a social problem.

We are eliminating the capacity of people to build their own future and to provide for the future. After a generation of having a casualised work force, we will have far more people depending on welfare in their advancing years than we have today. The so-called workplace reforms that have brought us to Totalcare today will cost generations in the future. It is short-term thinking on the part of the current federal government.

In terms of time, we have a couple of dates in mind. They are part of policy, but we have not even formed the implementation group and we have not even written the detail of the terms of reference. Therefore, I do not think that we should be playing the dumb game that seems to flow from the other side of the house about giving a date. Why don't you ask a question that has some substance to it, instead of asking about when something is going to happen. If that is the best you can possibly do, you are wasting the time of this house.

Community Housing Canberra

MS TUCKER: Mr Speaker, my question is to the minister for housing. Minister, I understand that changes to the rules of governance for Community Housing Canberra are being considered by government, and that several options for future management of community housing are being considered, including setting up a separate company to own the properties that CHC manages and turning it into a statutory authority.

Can you advise the Assembly how the CHC board—the community housing providers—and community housing tenants are involved in these rule changes; how we can be assured that their concerns will be addressed; and also whether these changes will result in CHC gaining the right to sell-off property in order to fund further development?

MR WOOD: Mr Speaker, there is a round of discussions listed in my diary with CHC. CCHOACT and other groups will be interested in what is happening. I am not prepared, at this stage, to indicate where we are going because there is a whole process of discussion, to work out just what options for community housing are best, and how they might best be pursued. If you give me some time to work these issues through, in a relatively short period, I might be in a position to respond in some detail. We have not yet come to any conclusion but I can tell you that, in the nature of how we do things, there will be ample discussion with all those involved.

MS TUCKER: Mr Speaker, I have a supplementary question. Minister, can you reassure the Assembly that, in these discussions, the question of security of tenure will not be compromised?

MR WOOD: I would not think security of tenure would be compromised. We have brought it in with ACT Housing properties. I cannot see any means by which we would go back on it—we have only just done it. We are not about to take a different step—certainly not.

Land rates—new system

MR STEFANIAK: My question is to the Treasurer. Treasurer, I refer to a report in the *Canberra Times* on 11 March this year, indicating that you are planning to introduce a new rates system. It was reported that, under this system, existing leaseholders would face rates increases no greater than CPI each year, but new home buyers buying into a suburb would be rated on the unimproved value of the property they bought. Treasurer, will this system not lead to the situation in which a wealthy property developer, or a very senior, well-off public servant who has lived in Forrest for a long time, would pay lower rates than battlers buying their first home in Dunlop?

MR QUINLAN: Theoretically, yes, but it would take a long time. Of course, Mr Stefaniak, what your question does not take into account is the fact that the formula that is applied to the unimproved value is still open to adjustment each year. Each year that formula has been changed and it has been changed to achieve the result that it failed to achieve. It achieved a result at the gross level but was still, I think, unfair to given individuals.

The new system that will be brought in does not preclude the government from dampening the effect of galloping unimproved value prices in the formula. It is just a number. It is a number that has been voted on nearly every year, each time the budget comes around. There is no reason for that system to change.

MR STEFANIAK: Thank you for that, Mr Quinlan, but will your somewhat short-sighted new rates system potentially drive new home buyers across the border to New South Wales, where they will pay rates under what is perceived to be a much fairer and more obvious system?

MR SPEAKER: That is hypothetical, Mr Stefaniak. I will not allow that question.

Police—level of services

MR PRATT: My question is to the Minister for Police, Mr Wood. The recent report on government services showed that, where Australia had a national figure of 281 sworn police officers per 100,000 in 2001-2002, in the ACT there are 242 sworn police officers per 100,000 people. Is it still government policy to provide the people of the ACT with a lower level of police services than the rest of Australia?

MR WOOD: It is remarkable that Mr Pratt should simply stand up and blandly say that we are getting a lower level of police services than the rest of Australia. How about giving me a question that has some basis in fact, or giving me a statistic other than the one you did? I am not of the view—

Mrs Dunne: The report on government services.

Mr Stefaniak: It sounded pretty factual to me.

Mrs Dunne: It sounded pretty factual.

Mr Pratt: Thirty-nine is a pretty strong factor.

MR WOOD: You may not have great confidence in the police force, but I do. I believe it provides a very good service to the ACT. In fact, I have to tell you that, at 8.00 am this morning, at a conference of the senior executives of the police service, I told them that I believe they deliver a very good service to the ACT. I think they would be disappointed to hear what you say, Mr Pratt.

There is no point of order. You might as well sit down.

Mr Pratt: Point of order. You have not even heard it yet. Listen. Can't you listen?

MR SPEAKER: Order. That is a bit hypothetical, Mr Wood, because I have not heard it yet.

Mr Pratt: Mr Speaker, my point of order is that I did not claim that we have a lower level of police services.

MR SPEAKER: That is no point of order.

Mr Pratt: I think the police service is fantastic, but it could be better.

MR SPEAKER: Resume your seat, Mr Pratt.

Mr Quinlan: Sit down.

Mr Pratt: Up yours.

Mr Smyth: Point of order, Mr Speaker. Standing order 118(a) says that answers "shall be concise and confined to the subject matter of the question". The subject matter of the question is the comparison between the ACT number of 242 and the national average, which the minister is avoiding by creating a smokescreen, so it is a valid point of order.

MR SPEAKER: First of all, the minister has not been given much of chance to give a concise answer. Second, he was sticking to the subject matter, which was policing.

MR WOOD: Thank you, Mr Speaker. If my memory is correct, Mr Pratt was asking about whether we get an inferior level of service.

Mr Pratt: No.

MR WOOD: You were talking about service.

Mr Smyth: Point of order, Mr Speaker. The question is about the number of sworn officers. Mr Pratt made the comparison of the national average of 281 against the ACT figure of 242 per 100,000. It is not about the quality of the service. It is about the number of officers.

Mr Quinlan: It is not a debate. Sit down.

Mr Smyth: No, it is a point of order.

MR SPEAKER: Mr Smyth, it is not an issue of relevance, it is about sticking to the subject matter. The subject matter of the question was policing and Mr Wood is talking about policing.

Mr Smyth: And the national average?

MR SPEAKER: I cannot put words in Mr Wood's, or any other minister's mouth, and neither can you, regrettably.

Mr Smyth: This is true but you can expect them to be relevant.

MR WOOD: Thank you, Mr Speaker. My memory tells me that Mr Pratt's punchline, Mr Smyth, was whether we get a lower level of service. It had the word service in it. It is a simplistic question.

Mr Smyth: It is a question that Johnny Hargreaves used to ask.

Mr Quinlan: You want something different? We have to put up with them.

MR WOOD: Point taken, Mr Quinlan. There is a whole series of assumptions about the level of policing and the services we deliver. I think that, if I went back into the record—and I have not done it and I do not intend to—I would find that, historically, the ACT police numbers per 100,000 have been lower than the Australian average. I doubt it was any different when Mr Smyth was minister for police, or Mr Stefaniak. It does not make any difference.

Mr Hargreaves: It was lower.

MR WOOD: It was lower, was it, Mr Hargreaves?

Mr Hargreaves: It was a lot lower.

MR WOOD: I am not sure that I want to get into the argument and go back to see what the statistics said. It relates to the sort of community we were at the time. If I really wanted to go backwards I could probably find the answer Mr Smyth gave that might have been something of the order of, "This is a community that is, in itself, not average for Australia. It is, in itself, not the standard for Australia." In all sorts of areas, the services we offer are different. I believe that they are, in every respect, excellent.

MR PRATT: Is the minister aware of the ACT Labor Party's current website which states, under policy, in the section on justice and community safety, and I quote, "Labor will implement a program to restore the number of police officers available to at least the national average"? Mr Wood, come in spinner. Is this just another example of broken promises by a lacklustre government?

MR WOOD: Mr Speaker, if Mr Pratt had paid attention during the last budget, he would have been aware of the increase in funding that we gave to policing, and the increase in police numbers as a result of that, as we move towards achieving our commitment.

Bushfires—salvage of timber

MR HARGREAVES: Mr Speaker, my question is to the minister for urban services, Mr Wood. Minister, are you aware that ACT Forests has only two contractors working to harvest the trees burnt during the bushfires? Is the minister also aware that there is a limited time to harvest these logs before they dry out and become unusable?

Minister, as ACT Forests lost two-thirds of its plantation estate during the bushfires, will the existing arrangements be able to cope with the massive harvesting task, or will precious timber and financial return be lost to the territory?

MR WOOD: Mr Speaker, the answer to the first two parts of the question is yes, but I will elaborate just a little. We are much aware of this. It is vitally important that ACT Forests salvage as much of the valuable burnt timber as possible. I think members would have been switched into the debate which made clear the need to do that rapidly. There is a limited time—something like three to six months—to harvest the burnt logs before the wood dries out. It can be affected by fungus. At that stage, there is no point in harvesting it.

Two-thirds of the forest gone is a tremendous blow. Notwithstanding all the damage and, in many circumstances, the personal losses of some of our forestry people, ACT Forests immediately began a salvage operation, to harvest as much of the commercial timber as possible. There are generally two contractors—that is what the system has required in the past. It is a measure of the spirit, I suppose, amongst foresters and companies which employ them that there has been enormous assistance from nearby to help in the harvesting operation.

ACT Forests now have a three-way partnership with State Forests of NSW and a local firm—South Forestry—to ensure that as much of the burnt timber as possible is harvested. State Forests of NSW and South Forestry have stopped operations in their own plantations and sent their harvesting contractors to the ACT. That is a very good effort to have made. You cannot simply open the *Yellow Pages* and get a harvesting contractor with machines worth up to $1 million. So, thanks to this good relationship, we have an additional six harvesting contractors to assist with the salvage operation. You can do your maths—that is triple our capacity. We believe that, through this, we will be able to recoup the maximum amount of timber possible.

MR HARGREAVES: Mr Speaker, I thank the minister for the answer. I have a supplementary question. In addition to the arrangements made for harvesting the burnt timber, have any arrangements been made to find markets for the salvaged timber?

MR WOOD: That is important. We need to get the timber processed as quickly as possible. Under the partnership, State Forests of NSW will effectively sell some of the burnt logs into its markets in New South Wales and Victoria. Once the salvage

operations of ACT Forests are finished, State Forests of NSW will supply ACT Forests customers with logs from their own plantations. This extra log supply will ensure that ACT sawmills will be able to operate for up to three years, once this supply ceases.

This partnership is an example of the camaraderie and the innovation, as well as the competition, which exists in this industry. I am very grateful for what they have done.

Gungahlin Drive extension

MRS DUNNE: My question is to the Minister for Planning, Mr Corbell. It refers to Gungahlin Drive extension.

Mr Wood: About time.

MRS DUNNE: I have been keeping you on tenterhooks. Now that the issue of whether the route of Gungahlin Drive should be east or west has been resolved, when will you begin work on building the road? How many lanes will be built? When do you plan to finish the road?

MR CORBELL: I have been waiting for a question on Gungahlin Drive extension for quite some time. I was disappointed. I thought I was going to go through another question time without a single question. I am greatly relieved that Mrs Dunne has put me out of my misery.

The opposition would be aware, as would all members, of the government's stated position in relation to Gungahlin Drive extension and the announcement I made on behalf of the government late last year. The government is now proceeding with the necessary planning work that is required to construct the road on the eastern alignment. This includes ensuring that the road is built as far as possible away from the Bruce and O'Connor Ridge area of Canberra Nature Park.

It is a fundamentally flawed view on the part of the National Capital Authority that the interests of the Australian Institute of Sport are more important than the landscape setting of the national capital. It is a failure on the part of the National Capital Authority to uphold its statutory responsibilities and to take account of the appropriate planning framework and landscape setting of Canberra as the national capital.

There is not a single consideration of the impact on Bruce and O'Connor Ridge in all the National Capital Authority's assessment of the eastern alignment. All of the analysis is about the Australian Institute of Sport. It is little wonder that this is the case when the Liberal Party and its agents work on this issue day and night. It is probably worth highlighting the fact that Mr Gary Kent is a senior adviser to Mr Wilson Tuckey, the minister for territories. What does Mr Kent do outside his work time? He just happens to be the divisional president of the Liberal Party in the ACT.

Any assertion from those opposite that this was not political is groundless. Quite clearly, this has been a political decision from the outset. The Liberals locally and federally have simply sought to exercise their political muscle to overcome the election commitment of a democratically elected government.

Planning for the eastern alignment now being done by the government—

Mr Smyth: I take a point of order, Mr Speaker. Mr Corbell has been going for almost five minutes now. The question was about a timetable, not a political reminiscence about the GDE. Does he have a timetable, and will he inform the Assembly in answer to the question?

MR SPEAKER: Far be it from me to enter the debate, but if you ask questions about the GDE you are going to get a fairly comprehensive answer, I would have thought.

Mr Smyth: It would appear that we are getting a comprehensive answer on everything but the timetable. He has not even mentioned the word "timetable". Mr Speaker, I would ask you to direct him to answer the question.

MR SPEAKER: I am sure Mr Corbell is coming to that point.

MR CORBELL: The matters the government has to work through in determining the construction timetable include consideration of the alignment of the eastern route. The National Capital Authority proposed an alignment that was closer to O'Connor and Bruce Ridge than that proposed by the previous Liberal government. Is the Liberal opposition now saying that we should adopt that position, a position that they were not prepared to adopt in government? It shows you how bankrupt the National Capital Authority's decision is that they move the road closer to O'Connor and Bruce Ridge than the previous Liberal government's proposed alignment.

We will be seeking to alleviate, as much as is practicable, any potential impact on Bruce and O'Connor Ridge. We will seek to build the road on the eastern alignment as far away from Bruce and O'Connor Ridge as we can. These investigations are now under way. They are due for completion at the end of this month.

An evaluation of alternative alignments for the GDE in the area of Aranda also forms part of these investigations. It is necessary for the National Capital Authority to vary the National Capital Plan to provide for an alignment to the east of Caswell Drive. It is interesting that Mrs Dunne has gone very quiet on the issue of Caswell Drive. It is interesting that the National Capital Authority has accepted the government's position that the road needs to be built to the east of Caswell Drive. It is the only logical element of their decision.

The NCA's decision and the need to undertake additional investigations into the eastern alignment will have no impact on the timing of the preliminary assessment process, which has now been completed by Planning and Land Management. The government is confident that the Gungahlin Drive extension will still be completed within the timeframe we have previously outlined. However, in the interests of clarity, I will take the question on notice, double-check the information and provide an answer to Mrs Dunne.

MRS DUNNE: In the interests of providing information to the people of Gungahlin about this much needed road, can you table that schedule by close of business today? Check your figures and get back to us.

MR CORBELL: I will take the question on notice, Mr Speaker.

Totalcare

MS DUNDAS: My question is to the Treasurer. Treasurer, you have indicated that the road maintenance business in Totalcare probably will be closed down or sold off later this year, once the Totalcare working group has reported. Will the working group tackle the ongoing problem of public subsidies going to private contracts, rather than simply looking to privatise businesses that are not profitable?

MR QUINLAN: I am not sure that I got the gist of the question. If we go to the market for roadworks, the market will determine the price, I am sure. It is probably being a bit simplistic to talk about the government subsidising individual areas of Totalcare. If the private sector offered a price and Totalcare offered a lesser price and we took the Totalcare price, but they made a loss, maybe we have paid no more anyway; we have just paid it in two lumps, one in the price and one in the overall loss on Totalcare. If we hadn't done that in the short term, we would have been paying for the full cost of the roadworks and a lot of idle equipment and possibly some idle workers as well.

It certainly would have been within the interests of Totalcare to win work because, even if they are winning work to make less of a loss than they would if they got no work, they would have still saved the taxpayers money. We have a set-up now. As I said in answering questions earlier today, what we are trying to do now is to set in place structures that allow us to do the jobs that we need to do and provide the services that we need to provide at the most cost-effective outlay overall. At the same time, having inherited that structure, a structure about which the previous government did a lot of talking and took absolutely no action, we find ourselves with the very difficult task of trying to set that right.

I do appeal to the house as a whole—I do not know whether I am wasting my time—not to try to make too much politics out of this issue. It is going to be difficult enough for the people involved as it is without its trying to be stirred into some sort of massive political issue. Really, it is about, on the one hand, trying to ensure that we look after the taxpayers' dollars and, on the other hand, having to recognise that we have there a work force which is mostly permanent. It is a work force to which a previous government gave a commitment to a lot of them that they would go back inside the public sector proper if the function was no longer carried out by Totalcare. There are some implied contractual arrangements to be worked right through; so, give us a break.

MS DUNDAS: I have a supplementary question, Mr Speaker. I think that the Treasurer wandered off the topic I was actually getting to. Will the government allow a business segment of Totalcare to operate where it is turning a profit but is subsidising non-ACT government contracts?

MR QUINLAN: I am not sure I get that. Will we continue to operate an effective area? Yes.

Ms Dundas: If the taxpayers' money is going to non-ACT government contracts.

MR QUINLAN: There are two elements, aren't there? Will we subsidise loss-making activity and will we continue profit-making activity? They can be separated, can't they? No. I think we have offered you a briefing that you are yet to get; is that right? Have we offered a briefing?

Ms Dundas: Yes.

MR QUINLAN: Perhaps you should take us up on that and we will provide it.

Ms Dundas: But I am asking for public information.

MR SPEAKER: Order! You have a question before the house.

MR QUINLAN: I am actually trying my best to understand the thrust of the question; that's all.

MR SPEAKER: I am sure that Ms Dundas would be prepared to ask the question again.

MS DUNDAS: But in a different way. If a business segment of Totalcare is operating efficiently, will it be allowed to continue, even though it is making enough profit out of ACT government contracts to, to a certain extent, undercut on non-ACT government contracts?

MR QUINLAN: The best answer I can give to that is that, if we have a section of Totalcare operating in the future, we would expect it to perform in the overall sense and we would expect it to be involved in differential pricing from time, as is everybody else. The private sector would do the same.

Ms Dundas: But not with public money.

MR QUINLAN: We are talking about this thing actually operating effectively, and I hope that you mean competitively and benchmarked. If it is operating effectively at a benchmark with the private sector and is turning a profit and it wants to expand its business by putting in supercompetitive pricing, then that would be a business decision. It is the same as the decision that a private sector business would take. If we had a section of Totalcare working as a commercial entity tomorrow, we would not hamstring it in any way in comparison with the private sector.

Disabled people—taxi subsidy

MRS BURKE: Mr Speaker, my question is to Mr Wood, the Minister for Disability, Housing and Community Services. Minister, late last year the acting chief executive of Disability ACT wrote to various local disability groups making a specific commitment to implement changes to the ACT taxi subsidy scheme by 1 March 2003. Minister, as the changes have not occurred, why has your government broken its promise to the disability community? When will the disability community get a real undertaking from your government to do as it has promised?

MR WOOD: Mr Speaker, it the fact, regrettably, that we did not meet that deadline, and there are a number of circumstances around that. But the fact is it has not been met. We are now working, I believe strenuously, to get the system up and running as soon as possible. We have notified the people concerned—people who were part of our policy development. We have notified those who are impacted by the delay, explaining and apologising to them for the delay. I hope soon to be able to get it on track and up and running.

MRS BURKE: Mr Speaker, I ask a supplementary question. Minister, is this latest broken promise symptomatic of a government that simply cannot make a decision or, when it does, fails to implement it?

MR WOOD: No, it is not.

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

Bushfires—submissions to inquiries

MR WOOD: Mr Speaker, last Thursday Ms Tucker asked Mr Quinlan a question about an email sent to firefighters about preparation and submission of material to the coroner investigating the January bushfires. Mr Quinlan took the question on notice and, as it falls into my area of ministerial responsibility, I will provide the response.

Ms Tucker referred initially to an answer to a question asked by her, as a member of the Public Accounts Committee, of the Chief Executive of the Department of Justice and Community Safety, Mr Keady. Briefly summarised, Mr Keady assured the Public Accounts Committee that no direction had been given to firefighters which would prevent them from making submissions direct to the McLeod inquiry. He also said it would be inappropriate for any such direction to be given and anyone, including firefighters, who wished to make a submission direct to either the McLeod inquiry or the coroner should feel free to do so.

Against that background, Ms Tucker expressed concern about an email sent to firefighters by Superintendent Kent, who was the fire brigade's liaison officer to the AFP investigation team acting on behalf of the coroner. Ms Tucker's concern is that the email seems to contradict assurances given earlier by Mr Keady that firefighters are free to make submissions. Mr Speaker, I can assure the Assembly and Ms Tucker that no such contradiction has occurred and any firefighter who wishes to approach the coroner to make a personal submission is absolutely free to do so.

The coronial process is an exhaustive one. For some weeks now a team of AFP officers investigating on behalf of the coroner has been contacting all the government agencies involved in the bushfire effort to identify and obtain relevant documents, to identify personnel from whom statements will be required, and to undertake other inquiries. At the request of these AFP investigators, the fire brigade and the bushfire and emergency service each nominated a liaison officer to facilitate the provision of information from their respective services to the coronial investigation team. Recently, both liaison officers sent similar emails to personnel in their respective services.

The fire brigade email, which was read to members last Thursday by Ms Tucker, advises recipients of Superintendent Kent's liaison role and of the material the investigators are seeking from the brigade. He also said that he would be the only conduit for the provision of material on behalf of the brigade to the investigation team. That is an entirely appropriate arrangement, made at the request of AFP investigators and intended to assist the coroner.

There is nothing sinister in this. The fire brigade as an entity has a legal responsibility to assist the coronial process. It also has an organisational obligation to prepare itself to make submissions to, and respond to issues raised, by the McLeod and coronial inquiries. The magnitude and complexity of these tasks should not be underestimated. I am advised that more than 10,000 government documents have already been identified as relevant to the inquest, with the collation process only partly completed. The lengthy process of preparing detailed statements has only just commenced.

Both inquiries have advertised for submissions direct from interested members of the public, and if any firefighter wishes to make a personal submission, he or she is free to do so. However, quite separately from their freedom to convey personal opinions to these inquiries, members of the fire brigade are duty bound to assist that brigade to discharge its legal and other obligations to the coroner and to the McLeod inquiry. The email is relevant only to the brigade's formal obligations.

Other than Ms Tucker's question, I am not aware of any concern arising from that email. For most of last week the Acting Fire Commissioner and senior departmental staff were in negotiations with the firefighters union over an enterprise agreement. The union officials present did not mention any concerns about the email, and they are not people who would be described as shy or easily intimidated. However, for the sake of prudence, the Acting Fire Commissioner issued on 7 March last a minute to all staff which refers to Superintendent Kent's email, and which in part says, and I quote:

> This internal ACT Fire Brigade protocol does not limit in any way the individual rights of staff to make submissions to the Coroner, but it is designed to provide one focal point for the Coroner when formally requesting information from brigade staff.

Mr Speaker, there is never any wish to prevent access to the two bushfire inquiries and the commitment that the fire brigade members are free to make personal approaches to either stands unequivocally.

Papers

Auditor-General's report No 2

Mr Speaker presented the following paper:

> Auditor-General Act – Auditor-General's Report – No. 2 of 2003 – *Belconnen Indoor Aquatic Leisure Centre*, dated 11 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 for leave to move a motion to authorise publication of the Auditor-General's report.

Leave granted.

MR WOOD: I move:

> That the Assembly authorises publication of the Auditor-General's Report No. 2 of 2003.

Question resolved in the affirmative.

Hepatitis C—Lookback program

Mr Corbell presented the following paper:

> Hepatitis C – Lookback program and financial assistance scheme – Report for the quarters ending 30 September 2002 and 31 December 2002.

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Reference to committee

Debate resumed.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (3.35): Mr Speaker, I had said essentially as much as I want to say. I think the point is that the government gave long notice of its legislative intent and its program in relation to this legislative package. We did not drop it on either the community or this Assembly by stealth; nor did we want in any way to take anybody by surprise. The program was announced well in advance and the bill was tabled on 12 December. This is the first part of the program.

Everybody had ample time to consider the 37 separate legislative provisions that are being debated here today. None of them is particularly complex. There has been good community consultation through the issues paper. Mr Stefaniak himself acknowledges that he has received more representations on this subject than on anything else, except perhaps abortion, in the entire term of this Assembly.

There is no great advantage, particular advantage, or indeed any advantage at all, in referring off this legislative package to an Assembly committee. This really is just a device to delay; it is not a reflection of any determination to consult more or better or to give greater or deeper thought to any of the issues that are being considered. It is essentially a device of the Liberal Party, of the opposition, to put off to another day a subject with which they are uncomfortable, and a subject on which they do not wish to engage.

That is what this is about. It is simply putting off a subject matter which the Liberal Party do not want to talk about in any event. It is not about allowing more consultation, it is not about allowing further, better or deeper consideration of any of the issues. These are not issues that require the consideration of a standing committee.

The position may be different in relation to the other matters which we foreshadow through the issues paper are yet to be considered in the context of the report which the government is preparing and will table in May, and in relation to which we have not developed a process to take this forward. It may be that the motion that has been moved today may be one way of dealing with those further issues which we know about and with which we are now determined to deal. But there is no need for the referral of this bill to an Assembly standing committee. This is, as I say, simply a delaying tactic to allow the Liberal Party to in some way to reach a position on an issue around which it is simply not comfortable.

MS DUNDAS (3.39): Mr Speaker, I do not support the referral of this piece of legislation to the Legal Affairs Committee. At this stage it is quite unnecessary to do that. Consultation has occurred over the last four months, which is why we have the amendments before us.

Perhaps the process could have been handled better, perhaps a round table discussion was needed, perhaps we could have looked at it as draft legislation, but that did not occur. We have before us today the outcome of consultations that have taken place in respect of the amendments to this quite important and workable piece of legislation.

I am a bit concerned about the comments that have been made about the time frame. In August last year I moved a motion in this chamber calling on the government to start the consultation process and to look at a whole range of issues relating to the discrimination that the GLBTI community faces. That motion was supported by this Assembly. I would like to quote from what the then Leader of the Opposition, Mr Humphries, said at that time:

> We believe that legislation in the ACT should appropriately prevent discrimination against people on the basis of their sexual orientation; that discrimination of that kind is contrary to principles of liberalism that suggest that people should be free to express and to do as they wish, provided that their actions do not prevent other people in the community from being able to exercise similar freedoms. The sense of the supremacy of individual choice is the concept which I think militates in favour of removing discrimination in general terms against people of different sexual orientation to ensure that those people enjoy the same freedoms as other people in the community.

If it was as simple as that for the Liberal Party in August, I do not understand why it is so hard now in March. I would like the debate on this piece of legislation to progress today so that we can take this step of removing the discrimination that exists in our current laws.

MS TUCKER (3.41): For similar reasons, the Greens will not be supporting the reference of this bill to a committee. I will not take up too much of the Assembly's time, except to say that, as a member of the Assembly, I know that I have certainly been engaged for a long time in the thinking around this legislation.

The opposition made its intentions clear even before Ms Dundas moved her motion. Previous assemblies have had discussions about this. Perhaps there was a little bit too

much pressure on the Liberals for them to make a last-minute decision. I received an amendment from the Liberals this morning, so obviously they were feeling under pressure. Their amendment is easy to understand and I am comfortable enough to have a debate on it today.

There has been a lot of community interest in this legislation. I am surprised that the Liberals are saying that they do not feel there has been time to consult with the community. I find the opposite to be the reality. I have been contacted by a number of people. I have had long discussions about the issues with representatives of various Christian and faith groups and there are certainly very mixed views.

I spoke to one busy lobby group—I cannot remember its name; I think it is called the Christian Community Lobby—which put forward their understanding of Christian values in respect of this issue. But there are other Christians and theologians who have quite a different view, and that makes for a healthy debate. I have been having that debate for quite a while and I do not see that my situation is any different from that of any member of the Liberal Party. In fact, they would be better able to deal with this issue because they can share the work amongst themselves. As I said, I am quite comfortable about proceeding with this legislation.

MR SMYTH (Leader of the Opposition) (3.43): Mr Speaker, some of this may just be a matter of perception. There has not been an attempt to lay blame. Legitimate concerns have been raised by people who want more time to discuss the matter. As has been pointed out, it is not just the Liberal Party that is in this position. I have an email from the Australian Intersex Support Group—the AIS Group—dated 4 March, which states:

> I was really horrified when I saw the proposed amendment and realised that the time frame did not allow for proper community consultation.

There are another references in the chain of emails from groups such as the AIS to the effect that they would like more time to discuss the amendments with their members. The AIS is a valid group in this argument. They have said to us that they think consideration is being rushed. Another email said that it seems the legislation is being rushed through. So that is not just the Liberal Party talking. Groups that have a genuine and keen interest in this debate are saying that they would like more time for consideration.

I think the government has, in the normal course of events, probably provided a good length of time for consideration of this legislation. The bill was put on the table in December, which means it has been with us for almost four months. But, as was pointed out on the radio this morning, Christmas and the bushfires have meant that there has not been a lot of discussion on this community issue. Some members have also made this point.

Some of the groups that I have spoken to thought that their submissions would be taken in the context of this bill, the discussion paper and anything else it might come up. I said to them, "Well, you need to make that quite clear to the government." They thought that this bill would not come on until the other work had been done, and that this would be considered as a whole. Maybe they were wrong in their assumption.

I think the number of submissions that were made shows that a lot of people are interested in getting this right and making sure that it does progress. Some of them are simply asking for more time. There are a number of amendments on the table—some have been there for a long time; some have been there for a short time. It would be reasonable in that context to send the bill to a committee for reporting.

MRS DUNNE (3.45): Mr Speaker, I wish to speak in support of the motion. I think the most telling point is that the government has said, "Look, you have had December, January, February, March." If this was a planning matter, as a proponent for a planning application, I would not be able to put out something for public consultation in December because of the fact that that time of the year coincides with school holidays and people are not able to be focused. I would have to do one of two things: postpone or extend the public consultation.

Every member of the community has the normal distractions over the Christmas school holiday period. In addition to that, the ACT community suffered a great loss during January and that has distracted the entire community. It is only in the last couple of weeks that people have started to focus on this as an issue, and they are now expressing concern to their elected members about issues that arise here.

This is not to say that a vast amount of what is in this legislation is not worthy of support. But there are many ways to approach this issue, and the way that is being proposed in this legislation may not be the optimal approach. You may be able to arrive at a situation where you can legislate against unwarranted and unnecessary discrimination by way of a whole lot of other means.

There are people in the community who are asking—they have the right to ask and really demand—that we should be attentive to their needs. There are legitimate groups in this community who are intimately involved and associated with the sorts of things that are happening in respect of this legislation. The intersex community as a whole has demonstrated to me and to other people in this place that they have been left out of the loop on this. This is a very substantial community of people who have particular interests which I think this legislation presumes go in a particular way, and they are not comfortable with that.

All of us here in this place want to do as much as we can to diminish discrimination against people of any persuasion. Whether it is their sexual inclinations or their religious commitments, whether they are left-handed or right-handed, discrimination of a gross nature is inappropriate. But at the same time, we discriminate every day. We ask ourselves, "Do I wear a green jacket or a black jacket?" or "Do I go out to dinner with this person or that person?" All of things are acts of discrimination—some are legitimate, some are not—and we do not really air them in a public way.

Really, this only became an issue yesterday in the pages of the *Canberra Times*. There has been very little public discussion. People put in submissions in the expectation that there would be wider discussion, and lo and behold, almost immediately the discussion paper submissions closed we are here barrelling through this piece of legislation. But there has not been appropriate consultation because of the timing—I am not talking

about elapsed time—of the circumstances that surround what has happened in Canberra over the Christmas/New Year period.

We now have before us a substantial number of amendments. We have had one Liberal Party amendment today and we were given 12 pages of government amendments at 4 o'clock yesterday. It seems to me that they are all right, and there does not seem to be any particular problem with them, but there are a lot of issues in addition to the amendments and the whole thing should be brought to a committee so that it can be considered in a seemly way. Among other things, committees have a reviewing role to make sure that legislation meets the needs of the community.

There has been consultation, but that consultation for the most part has taken place behind closed doors. There has never been any public airing of views. People have written to me and to other members. As a result of some of that consultation, amendments have been drawn up. But we do not know what amendments have not been considered. There may be better amendments out there. These are things that should be properly looked at in the context of a committee.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (3.50): Mr Speaker, I seek leave to speak again.

Leave granted.

MR STANHOPE: I want to make a couple of quick points, and I do not want to delay the debate too much. It is not fair to say that there has not been an appropriate opportunity for consultation or for community participation in this particular debate. There has been ample opportunity. Another interpretation of the lack of letters to the editor or vocal points of view that Mrs Dunne talked about is that people are not concerned. They had a look at the bill, they went through it, and they thought, "Well, there is nothing in there to complain about or that I want to write a letter to the editor about."

I made the point before—and I did not have in front of me at the time an explanatory memorandum—that it is relevant to go to the nature of the amendments with which we are dealing today in relation to the 37 pieces of legislation which this bill seeks to amend. Certainly there is a live and active debate, and most of the submissions that I have received deal with the issue of marriage and go on to issues around the adoption of children. Certainly, a lot of the correspondence that has been received by most of us is from groups that have issues around people of the same sex marrying. There is a real concern out there, which we have heard expressed—and I think this is at the heart of what the Liberal Party is talking about here today—that in some way these proposals subvert the institution of marriage.

Mrs Dunne: They don't in and of themselves.

MR STANHOPE: Mrs Dunne says they do.

Mrs Dunne: I said they don't in and of themselves.

MR STANHOPE: I did not have the explanatory memorandum this morning, but just look at what we are dealing with here today. Mrs Dunne, I would suggest that this is why there have not been rabid letters to the editor.

Look at some of the things we are doing today. When I spoke earlier, I mentioned the Legal Practitioners Act. This is what we are doing with the Legal Practitioners Act: section 102 of the Legal Practitioners Act limits the class of people who can be engaged to conduct an audit of trust monies and other monies controlled by a solicitor. A natural person may not be engaged to conduct an audit if he or she is the spouse or de facto spouse of the solicitor by whom the records are kept. We are amending that section to include domestic partners—people engaged in a bona fide domestic relationship.

So, in fact, we are extending the ambit of a probative position under the Legal Practitioners Act to now provide that a natural person may not be engaged to conduct an audit if he or she is the spouse or de facto spouse of the solicitor or the domestic partner in a bona fide domestic relationship irrespective of whether or not they are heterosexual or homosexual. That is what we are doing. We are actually extending a probative provision that applies to legal practitioners.

Look at the issues in relation to the Mental Health (Treatment and Care) Act. Section 4 of the Mental Health (Treatment and Care) Act currently provides for the definition of spouse. "Spouse" is defined to include a person who is not legally married to the person but who lives with the person on a bona fide domestic basis. The definition is used in the definition of "relative", which includes a spouse. The definition of spouse relies on common law precedent and does not stipulate the sex of the couple but presumes it is a heterosexual relationship. Why, in relation to mental health treatment and care around issues of information, advice and consultation, would you not include people other than those who live in a heterosexual relationship?

There are a number of provisions in the bill in relation to protection orders and the remand centre to do with search—the searching of transgender people or intersex people. Ms Dundas and the government have a range of amendments in respect of this issue.

I have mentioned the Powers of Attorney Act, and the issue there is essentially the same issue as in relation to the Legal Practitioners Act. It is a new probative position which in fact picks up people. It includes within a probative provision in relation to powers of attorney people in gay and lesbian relationships. It actually includes them in a new range of responsibilities going to issues around probity.

There are a whole range of provisions of that ilk. There are provisions in relation to the Cooperatives Act and the Civil Law (Wrongs) Act. None of these provisions addresses this fundamental issue, which seems to be concerning you so much, around marriage and the definition and notion of marriage, and individual views around the sanctity of a marriage between a man and a woman.

So, Mrs Dunne, I would like to suggest that the *Canberra Times* has not received a barrage of letters because people have picked up and looked through the discussion paper and the bill and thought, "Well, why wouldn't you do that?" They probably expressed or

felt some surprise that the law is in the state that it is, and actually applaud the fact that we are dealing with it.

MR STEFANIAK (3.56), in reply: I think the Attorney-General is being somewhat disingenuous by going through a number of very non-contentious basic little amendments to acts. This tends to distort the argument. As I think my colleague, Mr Smyth, said, the difficulties are with the definitions.

Members may not appreciate—maybe some of you do; I think Mrs Dunne made this argument fairly well—that the point is the time factor involved. I have been in this place for quite a long time, as have you, Mr Speaker, Mr Wood and Mr Cornwell. We have seen a number of bills passed in this place that might have had the same gestation as the bill we are now considering—as the Chief Minister indicated, the department went through it about this time last year. On the other hand, I have seen acts passed in this place which have had a gestation period of three, four, five, six or maybe even seven years.

The only time legislation comes to the public attention, the only time the public starts to get involved, is when something is finally put on the table. I think Mrs Dunne very clearly indicated some of the problems that arose between this bill being put on the table in December and the debate that we are now having in March. Apart from just the normal break over the Christmas period, very tragic events occurred in that period.

If this bill is not controversial in any way—and I think the Attorney-General contradicts himself here—why on earth have we been given so many submissions in relation to it? And what do those submissions say? Some of those submissions quite clearly say that people want consultation—they want more consultation; they want to talk more about this in order to make it perhaps better legislation. Mr Smyth read out something from the intersex people. I, too, received a similar email on 4 March in relation to that.

I will read a couple of comments from people who have written to Mr Stanhope as well as to me, and perhaps to some other members. Les Summers from Gowrie writes:

> I have serious concerns for the proposed changes to the state law concerning definitions of people involved in the present recognised types of relationships. The first concern is that our representatives in the Assembly are making such life-changing decisions without any public consultation.

Les Summers has made a point and, quite clearly in his mind there has been not enough public consultation. Phillip Clayton of Canberra, in a letter of 25 February, says:

> I disagree with the proposition put to me by Mr Stanhope's office—

he has obviously rung them—

> that phase 1 of the bill contains no significant changes. In particular, its changing of definitions to diminish the pre-eminence of marriage among relationships is considered a significant matter by many people. I therefore strongly object to any part of the bill being progressed before consideration of phase 2 by the community.

The point about having them dealt with together comes through a lot. In another letter, Mrs Audrey McEwan of Holder states:

> I object strongly to the Discrimination Amendment Bill 2002 being progressed. There has been very little media coverage of the new proposals.

She has some concerns, too. Mr and Mrs Kelly, a couple from Duntroon, wrote:

> We are appalled and object strongly to any notion that the Discrimination Amendment Bill 2002 may be progressed before the community has been adequately consulted.

Mrs Punch of Chapman in the ACT wrote:

> It is really important for the whole community to have their say on this matter and I would object strongly to the Discrimination Amendment Bill 2002 being discussed or progressed before this happens.

Finally—I have a number of other letters; I am only reading out about five—Mrs Griffith of Queanbeyan wrote:

> I strongly object to the Discrimination Amendment Bill 2002 being progressed before consideration of phase 2 by the community. Too many values are at stake. I hope that you will acknowledge the concerns of the wider community as you assess these changes that will affect more than the lives of a few.

These people—and I have read out only a handful of the letters I have received—quite clearly feel that they and the community need more opportunity to be consulted, and what better way of doing that than through an Assembly committee. This would give people a chance to be consulted so as to ensure that we come up with legislation that is entirely appropriate. When one thinks about it, it is quite obvious and quite logical that these people do not feel that there has been proper consultation. These are terribly important issues and the community has a right to be properly consulted. An Assembly committee would do that.

I can read numbers as well as anyone else and I can see the way the Assembly will vote on the motion. I know a lot of people here would simply love this legislation to go through now. Many people in this Assembly talk a lot about proper community consultation. Well, here is your chance to do a little bit to achieve that—by voting for this motion, which I would commend to the Assembly.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Detail stage

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

Clause 4.

MR SMYTH (Leader of the Opposition) (4.06): I move amendment No 1 circulated in my name *[see schedule 1 at page 895]*. Mr Speaker, my amendment to proposed new section 169 is, of course, about definitions. Contrary to what the Chief Minister has said, we would agree with the majority of what is in the rest of the bill. Our concern is about getting the definitions right for the future.

Some people will not agree with the definition that I have put forward. Yesterday we had a meeting with Good Process and the Australian Christian Lobby, and I think it would be fair to say that Good Process was not keen on this model; they did not like this option. But I think it is a good option because, as you can see, the three components canvas and cover all the arrangements that one may have. There may be a marriage, there may be a couple of the same sex, and there may be a couple of the opposite sex. We believe that it covers all that needs to be covered.

It will be claimed that the amendment seeks to establish a hierarchy. There is no intention to do that. The three components fit neatly into subsection (2). I think the three options reflect the arrangements that people currently live in.

This definition would also be consistent with federal law. It will not contradict some of the federal law, and hopefully this will make the legislation work in a much smoother way. Until such time as work on the discussion paper is summarised and other amendments are brought forward, I believe that this is the best definition.

Before the suspension for lunch, the Chief Minister said something about the definition being limited. I would ask: who does it exclude? In what way is it limited? I think it is quite definite in its intent. It outlines the relationships that one may be in and it is a reflection of what goes on in the community. I think it covers all options. There is clarity in the definition that does not exist in the current definition that the government would put forward.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.08): Mr Speaker, the government will oppose this

amendment. As I indicated earlier, in the view of government this amendment essentially seeks to create a hierarchy of relationships. It seems to us that what Mr Smyth and the Liberals are doing is seeking to quite directly undermine the process we are engaged in today by saying that all relationships are equal but some are more equal than others.

The Liberal Party amendment seeks to omit proposed new section 169 and substitute the following new section:

169 References to *domestic partner* and *domestic partnership*

(1) In an Act or statutory instrument, a reference to a person's ***domestic partner*** is a reference to someone who lives with the person in a domestic partnership.

(2) In an Act or statutory instrument, a ***domestic partnership*** is the relationship—

and here is the hierarchy—

(a) between 2 people living together in a legal marriage; or

(b) between 2 people of the opposite sex living together as spouses on a genuine domestic basis; or

(c) between 2 people of the same sex living together as a couple on a genuine domestic basis.

There is your hierarchy. You have created a hierarchy, and the creation of hierarchies is completely contrary to the purpose that we are addressing here today. It seems to me, it seems to the government, and I think it would seem to anybody reading this amendment, that the amendment is internally discriminatory in the first place. It refers to concepts of opposite sex and same sex, unlike the government's definition which uses the expression "whether of a different or the same sex", and it does not take account of the relationship of transgender or intersex people. The definition proposed by Mr Smyth and the Liberals also unnecessarily complicates the legislation by breaking down into three subsets the central concept of two people living together on a genuine domestic basis. It is legally unnecessary.

The definition of domestic partnership in the government's bill is simple and inclusive. The definition in the bill does not affect the current operation of any legislation that is not amended by either bill. The definition also does not preclude the use of specific terms such as "spouse" if there is a need to distinguish this particular legal relationship in any future legislation that the Assembly may pass. And we need to remain mindful of that in the context of some of the debate that we have had, particularly in relation to the views around whether there has been appropriate consultation or whether there is a need to send this matter off for further investigation. It is important to remain mindful of the fact that there is no impediment to the continued use of the term "spouse" if appropriate or legitimate in any specific or special legislation.

There is nothing to be gained from Mr Smyth's amendment, apart from establishing a hierarchy of relationship, and the government, as I say, will not be supporting it. Mr

Smyth says that his amendment does not create a hierarchy. So you ask the question: well, what does it do? It creates a notion, it creates a concept, it creates a perception, it creates a view, it expresses a world view, that there is a hierarchy of relationships, and that at the top of the hierarchy the only really legitimate relationship is that which you describe as two people living together in a legal marriage.

You go on then and find the need to separate from that subset of partnerships, partnerships between people of the opposite sex living together as spouses on a genuine domestic basis, and two people of the same sex living together as a couple on a genuine domestic basis. Why do you feel the need to narrow the definition of domestic partner or domestic relationship, or domestic partner and domestic partnership in your terminology, and reintroduce concepts designed to distinguish between the legitimacy, status, worth or value of different sorts of domestic relationships?

It is a device—you need to be honest about it—designed to devalue the very principle which the legislation is challenging, namely that we have no basis and no right to be judgmental around the varied relationships which are part and parcel of humanity and human life. And that is what you are doing. You are being judgmental, you are imposing a judgment—

Mr Smyth: No I'm not.

MR STANHOPE: You are. You are imposing a judgment on the value of different sorts of relationships.

MRS DUNNE (4.13): Mr Speaker, I support the amendment. Without reflecting on the previous vote, I would like to go back to a comment made by the Chief Minister. The Chief Minister said, "Everyone talks about the fact that this piece of legislation is about marriage, and it isn't, and really what we want to do is make things more equal". No-one debates that; no-one debates the issues. The amendments to the Casino Control Act and to the Legal Practitioners Act are simple, straightforward and sensible. But the crux of all this hangs on the definitions.

I do not care whether you order it (a) (b) (c), (b) (c) (a) or (c) (b) (a). It is not a hierarchy. Different types can be considered equal under the law, and I do not have a problem with that. The amendment contains the word "or". One category is not better than another one. Everyone has their own private views about whether one sort of relationship might be more appropriate in a particular circumstance. But we are not talking in the amendment about private views. We are recognising the fact that there are array of domestic relationships.

Some of the people who currently fall into a particular sort of domestic relationship feel rather uncomfortable about the fact that in some way their relationship is being diminished by this legislation. The legislation is taking away as much reference as possible to de facto relationships and legal marriages under the Marriage Act and the majority of the people in this territory whose domestic relationships fall into these categories feel somewhat uncomfortable. Because they feel somewhat uncomfortable does not mean that we should do nothing, and no-one here is advocating that we do nothing. But we need to recognise that the majority of people in the ACT have a

particular sort of domestic relationship and what we are doing today is recognising, with full legal status, another sort of domestic relationship.

I do not care what order you put it in. The amendment is significant in that it says that there are a number of different types which are no more meritorious than the other. They are all equal. I do not care if you want to put them side by side in a column. However, the purpose of this amendment is to recognise that there are different sorts of domestic relationships.

MS TUCKER (4.16): The Greens will not be supporting this amendment. I have listened to the arguments from Mr Smyth and Mrs Dunne. Mr Smyth put the argument that the Liberals' amendment is important because it covers all that needs to be covered. Well, so does the government's wording in the bill. Mr Smyth says that the wording of his amendment reflects the different situations that people live in. The government's wording covers those different situations.

I am not sure whether you want to argue that the wording in the bill does not clearly reflect different situations. "Domestic partnership" is defined in subsection (2) of proposed new section 169 as being "the relationship between 2 people"—so what we have got in common is two people—"whether of a different or the same sex"—reflecting that there may be different combinations of the two people—"living together as a couple on a genuine domestic basis". Subsection (1) makes reference to "someone who lives with the person in a domestic partnership, and includes a spouse". I think that reflects perfectly well the different situations that people live in.

Mr Smyth also said that his amendment is consistent with federal law. I have not heard any argument to show that the government's legislation is not consistent with federal law. If that is the case, you will need to stand up and tell me again, and I will then listen to the government's response. But it is not our understanding, from the work that we have done, that it is not consistent with federal law.

Mrs Dunne said that there is a concern that the notion of what is the right way for people to live together is diminished in some way by the current wording that the government has put forward. Jon Stanhope has already expressed, and no doubt Ms Dundas will express, the concern I have that the Liberal's amendment fundamentally undermines the whole intention of this legislation. I am not going to argue about a hierarchy. I do not think it is about a hierarchy and obviously the Liberals do not either because they said they do not care about the order in which the categories in their amendment are placed.

The amendment fundamentally undermines the intention of this legislation, which is to say that it is legitimate for two people in any of the situations to which reference has been made to be in a domestic relationship—that it does not matter whether they have chosen to go into a church, sign a bit of paper and have a priest do something; it does not matter whether two people who love each other have their own ceremony; it does not matter whether they are two women or two men or a man and a woman; none of that matters. This is what this legislation is about and that is why we do not need the Liberal's amendment.

MS DUNDAS (4.19): Mr Speaker, the ACT Democrats will not be supporting Mr Smyth's amendment. I have just had put in front of me an amendment to Mr Smyth's

amendment which re-orders the three separate categories of relationship that he wishes to put into law. I think there are a number of things wrong with the amendment, irrespective of whatever order the categories appear.

Firstly, it is particularly insulting to view same-sex domestic relationships and opposite-sex domestic relationships as two separate types of relationship under law. It does appear that the Liberals have missed the point of this legislation by trying to say that same-sex relationships should not be discussed in the same breath as heterosexual ones.

While the debate has been going on I have been trying to think why we would want in our legislation the changes proposed by the amendment. Unfortunately—or perhaps fortunately—the reason that springs to my mind is so that we can perhaps say later, "Well, under subsection 2 (c) this type of relationship can have this type of rights. They can adopt, they can enter into a civil union, they can access IVF treatment, but those under subsection 2 (a) cannot." That is perhaps the only reason I can come up with why we would want to have separate categories. I truly find it abhorrent that someone would want to put in distinctions that we are working so hard to take out.

I also think it is disappointing that this amendment has been moved at all. I do not think it does anything to further equality for queer members of the Canberra community. I think it is an attempt to water down this legislation with a view to preventing further GLBTI reforms, such as those that are presented in the issues paper and that we will be discussing later in the year.

This legislation needs to be passed. One of the reasons why it is felt that different categories of partnerships should be separated is that we have not had enough consultation. It appears that the Liberal opposition believes that consultation involves discussion throughout the media. I can think of a number of times when debate around discrimination against the queer community has been in the media over the last 12 months.

When I moved my amendment in August there was media coverage in the *Canberra Times*, on TV and I believe on radio. There was discussion of this legislation in December when the discussion paper was issued, and just 11 days ago there was discussion of this in the *Canberra Times* when I went to Mardi Gras. There has been an ongoing debate in the letters to the editor page of the *Canberra Times*, not just the printed version but the online version. Some quite strong views have been put and much discussion has ensued. Even one of my favourite websites at the moment, Riot Act, has discussed the issue of the removal of discrimination. So, my understanding is that there has definitely been discussion of this in the public sphere.

To say that we need to adopt distinct classes of (a)-type relationships, (b)-type relationships and (c)-type relationships, in whatever order, really does undermine the work that has been done. I call on the opposition and the Leader of the Opposition to take a stand against those in our community that preach hatred and wish to entrench legal discrimination against queer Canberrans.

I call on them to stand up and say that they are unequivocally opposed to discrimination against GLBTI people. They should not be trying to set up false distinctions between

domestic partnerships based on the gender of two partners. Why should a relationship between two people who have a mutual commitment to share their lives and love be treated differently depending on their gender? That is at the core of the discrimination that we are trying to remove today.

MR PRATT (4.24): Mr Speaker, I personally support the removal of discrimination. I also support the need for couples of any sexual relationship and background to have legal access to all the services and support that a community can provide.

The opposition does not seek to insult people of a non-heterosexual background, as Ms Dundas claims. Indeed, I support Mr Smyth's amendment because, whilst we respect and seek to ensure that there is no discrimination and that the human rights of all people of all backgrounds are defended and looked after, we also want to make sure that the sanctity of marriage and the traditional relationships—the bedrock on which our society was founded—are maintained. That is as important as the objectives that are being pursued by the government and the crossbenchers in relation to other issues.

Mr Speaker, I am concerned that we do not send confused signals to the youth of our community about what is important; that we do not confuse the youth of our community about important society values. It is against that background that I rise to support Mr Smyth's amendment.

MR CORNWELL (4.26): I must say that, unlike the prepared response that we heard earlier to a question on this matter from Mrs Cross, I thought the other comments and suggestions by the Chief Minister—and I notice he is still alone in the chamber; I do not know what has happened to his Labor colleagues—were more like something out of *1984* than *Animal Farm*, in which some people are more equal than others. Really, the excuses that you put forward for rejecting Mr Smyth's amendment were quite pathetic.

I do not understand the Chief Minister's problem. You say that you wish to incorporate all of these forms of domestic relationships under one phrase. I do not know why you feel that is necessary. As I say, the wording owes more to *1984* newspeak than perhaps current English.

But the point is this: you are conveniently ignoring the fact that, as I said earlier in the debate, a significant number of the community probably do not want their status changed. They are quite happy to have other status acknowledged but they do not particularly want their status changed. Yet what you are proposing here is to put everybody under the one phrase. I have to say that, in practical terms, I fear this is just sheer tokenism because most people out in the community are going to continue to use the terms that they have always used. I do not know whether that means there will be some problems for them when the second part of this legislation comes through—we sincerely hope not.

I would simply ask, Mr Chief Minister: why do you take it upon yourself to deny other people the definition of their own relationships in order to narrow this down? You accused Mr Smyth of narrowing it. You have done far worse than that. Mr Smyth put up a perfectly reasonable amendment. He offered, in fact, to switch the categories around. You talk about hierarchy, for heavens sake! Spare me. Where do we go from here if we

are going to find that in future all legislation is going to be checked out to see whether there are any hierarchical limits placed upon it.

I believe that you are ignoring the wishes of a great many people out there who wish to see their own circumstances properly recognised in law, and I would urge you to reconsider.

MR STEFANIAK (4.30): I think Mr Cornwell used some very sage words. The Chief Minister and other members are ignoring the wishes of a lot of people out there who want their own circumstances replicated in law.

I would like to refer to a few issues that have been raised to date. The Chief Minister said that the amendment is judgmental. It is not. It goes through three types of domestic partnerships, and I will come back to that.

Mrs Dunne made a very good point about people in some current relationships who might feel diminished in legal terms. I did not think this legislation was meant to be about taking away the rights of certain classes of people. I thought it was a means of ensuring fairness right across the board; and fairness to some people in the community who feel they might not have had fairness applied to them in the past. I certainly am very concerned that there might well be some people now who feel that their current relationship has been diminished. Mr Smyth's amendment—and, indeed, his subsequent amendment which juggles around the (a), (b) and (c) categories—would ensure that no-ones situation will be diminished.

I said earlier that I have some concerns as to whether this bill is consistent with federal law and, indeed, a number of people who have written in have had similar concerns. Ms Dundas made an interesting comment that Mr Smyth's amendment would make it easier to stop same-sex adoptions. For her benefit, I would think that, on the question of same-sex adoptions, it would not matter one iota whose definition got up. That is another question entirely.

Mr Smyth's amendment is very clear. He lists the three areas of domestic partnership. Not everyone in our community is in a domestic partnership. Some of them might have been at some stage. We hear that a lot of people in our community live in different sorts of family arrangements. But Mr Smyth has quite clearly listed the three types of domestic partnerships.

From what I was told at a briefing that I had on this matter I suspect that probably a minority of people in our community currently live in a domestic partnership. I was advised that some 35 per cent of people actually lived in a legal marriage, and that about 7 per cent or 8 per cent of people of the opposite sex lived in a de facto relationship—I would have thought that might have been a bit higher. I was also told by government officials that 0.74 per cent of people were living in a same-sex de facto type arrangement. Again, I would have thought that might have been higher. So there are a lot of people who are not in domestic partnerships, and that is fine.

Mr Smyth has ably put forward the three types of domestic partnerships, and I think that separation helps when you are looking for consistency with other acts. The first type of

domestic partnership is two people of the same sex living together as a couple on a genuine domestic basis. The second type is two people of the opposite sex living together as spouses on a genuine domestic basis—what was once called a de facto relationship. The other category is two people living together in a legal marriage.

Mr Smyth's amendment states that "In an Act or statutory instrument, a domestic partnership is the relationship" between each of the three groups I have referred to. There is nothing judgmental about that. The word "or" appears at the end of the first two categories set out in the amendment which is now before the Assembly and the subsequent amendment, where the old (c) becomes (a), the old (b) I think remains the same and the old (a) becomes (c). He is merely listing the three obvious types of domestic partnership.

The criticism and concerns of a large number of citizens in our community will be partly allayed if this Assembly, contrary to what looks like happening, adopts the amendment. Also, some of the possible problems that might be faced if someone takes any of this to court on the basis of incompatibility with federal legislation might well be avoided.

I do not think anyone can take offence at Mr Smyth's amendment. He has simply set out in black and white and in a non-judgmental way—he has done so legally in the form of his amendment and also he has spoken about it—the three relevant types of domestic partnership people in our community can have. I think it is somewhat ridiculous that he is not getting more support for this eminently sensible amendment.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

MS DUNDAS (4.40): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 2 at page 895]*. Mr Stanhope's amendment No 1 and my amendment No 1 are the same. This is a simple amendment which expands references to definitions in the heading to clause 4 from two to three.

Amendment agreed to.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.42): I move amendment No 2 standing in my name

[see schedule 3 at page896]. This amendment inserts a note concerning the word "spouse" at the end of the definition of domestic partner. The note clarifies for the reader that "spouse" has its ordinary meaning.

Amendment agreed to.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.42): I move amendment No 3 circulated in my name *[see schedule 3 at page 896]*. Mr Speaker, as I indicated, this note is being inserted in order to make it clear to the reader that the current well-understood meaning of "spouse" is not affected by the use of the broad and inclusive term "domestic partner".

Amendment agreed to.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.43): I move amendment No 4 circulated in my name *[see schedule 3 at page 896]*.

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

Discrimination Amendment Bill 2002 (No 2)

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

> That this bill be agreed to in principle.

MR STEFANIAK (4.49): Mr Speaker, I will start by putting on the record a bit about the Discrimination Amendment Bill 2002 (No 2). Part of this bill relates back to the legislation bill we have just been debating. Looking at the current status of voting on that bill—at 10 to five—it is painfully obvious that, whatever happens, once it is sorted out, it will be passed and that the definitions relating to this part of the discrimination bill, which we have already dealt with to date and which have been passed, will apply.

I want to make that clear since clause 5 of the Discrimination Amendment Bill (No 2) adds new definitions for "domestic partner" and "domestic partnership". Advice received from Parliamentary Counsel is that the government will be opposing that just so they can be consistent with the legislation amendment bill we are currently looking at. That would apply whether Mr Smyth's amendment is successful or not. I accept the advice of Parliamentary Counsel there.

Any part of the Discrimination Bill that relates to the Legislation (Gay, Lesbian, and Transgender) Amendment Bill obviously has the numbers to get through as is, and some parts of it deal with that. That being said, there are other sections of this bill, and there are a number of factors here. There is some discussion, when I was being briefed in relation to this—

Mr Stanhope: Point of order, Mr Speaker. I have a point to make on procedure. My advice is that the bill actually being debated can only proceed if the previous bill is

passed. The amendments we are making to the discrimination legislation flow from the anticipated passage of the Legislation (Gay, Lesbian and Transgender) Amendment Bill.

I will take your guidance on this, Mr Speaker, but we are debating a bill now which is wholly dependent on the passage of legislation that we have just adjourned, and I fear the implications of our debating and passing legislation that would have no force or effect unless the Legislation (Gay, Lesbian and Transgender) Amendment Bill also passes. I am assuming it will, but I do not think we should proceed on the basis that it will.

Mr Stefaniak: On the point of order, Mr Speaker, the Attorney has a valid point. Whilst I think we can assume correctly, we are anticipating a vote of the Assembly, which is clearly quite incorrect. The Attorney is quite right: we should deal with this bill—because a lot of it relates to the previous bill—after that bill is finalised.

I back the Attorney in what he says and suggest to you, Mr Speaker, that we adjourn the house until such time as the other issue has been sorted out. You will recall precedents for that. We did that when we got into a bit of a muddle with some previous legislation in 2001 and adjourned for about 10 minutes until it was sorted out.

Mr Wood: Do you want to adjourn?

MR SPEAKER: In my understanding—I think I heard you right, Mr Wood—it was the aim to conclude by 6 o'clock.

Mr Wood: Yes there are commitments—committee meetings.

MR SPEAKER: I also understand that advice is being sought, and I do not know when we will get that advice. It is open to the house. It would certainly be inappropriate to pass this bill in principle, but the first thing that has to happen, Mr Wood, is that someone moves a motion to adjourn the debate on this bill.

Debate (on motion by **Ms Tucker**) adjourned to the next sitting.

Adjournment

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

> That the Assembly do now adjourn.

The Assembly adjourned at 4.55 pm.

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Schedules of amendments

Schedule 1

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Amendment circulated by Mr Smyth

1
Clause 4
Proposed new section 169
Page 3, line 6—

omit proposed new section 169, substitute

169 References to *domestic partner* and *domestic partnership*

(1) In an Act or statutory instrument, a reference to a person's ***domestic partner*** is a reference to someone who lives with the person in a domestic partnership.

(2) In an Act or statutory instrument, a ***domestic partnership*** is the relationship—

(a) between 2 people living together in a legal marriage; or

(b) between 2 people of the opposite sex living together as spouses on a genuine domestic basis; or

(c) between 2 people of the same sex living together as a couple on a genuine domestic basis.

Schedule 2

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Amendment circulated by Ms Dundas

1
Clause 4 heading
Page 3, line 4—

omit the heading, substitute

4 New sections 169, 169A and 169B

Schedule 3

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Amendment circulated by Attorney-General

2

Clause 4
Proposed new section 169 (1)
Page 3, line 9—

omit

a spouse.

substitute

a reference to a spouse of the person.

3

Clause 4
Proposed new section 169 (1), new note
Page 3, line 9—

insert

Note The Macquarie Dictionary, 3rd edition defines spouse as 'either member of a married pair in relation to the other; one's husband or wife'.

4

Clause 4
Proposed new section 169 (2), new example
Page 3, line 12—

insert

Example of indicators to decide whether 2 people are in a domestic partnership

the length of their relationship

whether they are living together

if they are living together—how long and under what circumstances they have lived together

whether there is a sexual relationship between them

their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them

the ownership, use and acquisition of their property, including any property that they own individually

their degree of mutual commitment to a shared life

whether they mutually care for and support children

the performance of household duties

the reputation, and public aspects, of the relationship between them

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).