DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

13 March 2003

Thursday, 13 March 2003

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Thursday, 13 March 2003

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.

Matter of public importance—proposed

MR SPEAKER: Members, this morning Mr Pratt lodged an MPI concerning the recent government inquiry into education funding.

Standing order 130 states that a matter on the notice paper must not be anticipated by a matter of public importance, an amendment or other less effective form of proceeding.

Private member's business notice No 20 is listed on today's notice paper in Mr Pratt's name and canvasses the same matter that is the subject of the MPI.

Having carefully considered the issues, I have concluded that the MPI would be anticipating debate on the item listed on the notice paper. I am therefore ruling Mr Pratt's MPI out of order as it contravenes standing order 130.

Agents Bill 2003

Mr Stanhope, pursuant to notice, presented the bill and its explanatory statement.

Title read by Clerk.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (10.32): I move:

> That this bill be agreed to in principle.

The Agents Bill 2003 replaces the old Agents Act 1968 and the regulations made under it. The Agents Bill exemplifies the government's determination to improve the commercial environment in which consumers and real estate, stock and station, and business, travel and employment agents interact. The new Agents Bill will deliver a cost-effective, streamlined, independent licensing and disciplinary system that is more accessible, transparent and accountable to the ACT community.

The Agents Bill represents the first major revision of this legislation since 1968 and, importantly, introduces a level of consumer protection noticeably absent from the old legislation. Not only will consumers of agents' services benefit from the proposed reforms; so, too, will agents and their employees.

In framing this bill, the government has concluded an extensive consultation process with interested parties, including key representatives of the real estate industry, the Agents Board, the Canberra Institute of Technology and community groups. All submissions have supported the proposed major reforms in this legislation.

I will now draw your attention to the important reforms in the bill. The licensing and registration of agents will now be undertaken by the Commissioner for Fair Trading, instead of the Agents Board, as the commissioner already carries out this role for other service industries in the ACT.

The bill simplifies the licence and registration process by creating a one-step process for licensed agents, replacing the old registration process. At the same time, however, the scope of the regulatory scheme has been extended to embrace salespeople who conduct the majority of real estate, stock and station and business transactions in the territory.

The bill repeals the Auctioneers Act 1959. Auctioneers of real property will no longer hold a separate class of licence but will now be regulated as licensed real estate or stock and station agents. This reform has the full support of the industry in removing a layer of bureaucracy and expense from the licensing process.

The granting of a licence to principals and a certificate of registration for real estate, stock and station and business salespeople will now hinge upon entry level competence, good character and continuing professional development. This innovation will lead to a significant upgrading of the general vocational skills of both principals and employees in these industries and at the same time improve the level of industry expertise, which will benefit ACT consumers.

The bill provides for an adequate lead time for existing employees to obtain the new competency standards and introduce flexibility in meeting the new competency levels. For example, an applicant may attain competence by undertaking a course of study or learning on the job and being assessed by a registered assessor. New applicants wishing to enter the industry will be required to attain the competency standards prior to the issue of a licence, after the proposed act has commenced.

Transitional arrangements are included for licensed and registered agents under the repealed act, existing employees and former auctioneers. Further consultation with industry and consumers will be carried out to develop the requirements for continuing professional development.

In a related bill I have tabled legislation establishing the Consumer and Trader Tribunal. This tribunal will include the existing Agents Board’s disciplinary jurisdiction and membership. In addition, for the first time consumers will have their grievances with agents dealt with by the Consumer and Trader Tribunal on referral by the commissioner. Empowering the tribunal to deal with consumer grievances acknowledges the significance of property transactions in people’s lives.

Grounds for commencing disciplinary proceedings are set out in the bill, together with disciplinary action the tribunal can take. The tribunal will have a number of disciplinary options available to it, which are:

- reprimanding an agent;
- imposing an enforceable undertaking;
- imposing conditions on a person's practice;
- disqualifying a person for a specified period;
- disqualifying a person from being involved in the direction, management or conduct of the business of a licensee;
- imposing a monetary amount to be paid to the territory or a consumer; and
- suspending or cancelling a licence or registration certificate.

Members should note that the government intends that the ACT Office of Fair Trading inspectors be given power to serve spot fines on agents who have committed an offence under the proposed act. These offences will be prescribed by regulation as penalty notice offences in consultation with industry and consumer groups.

Stronger enforcement measures have been introduced to ensure the integrity of agents' trust accounts, and agents who provide financial investment advice to people intending to buy real estate will now be required to provide specified information or warnings to consumers in circumstances where they are providing general financial advice as an incidental part of selling real estate. Regulations will prescribe the necessary information and warnings.

New offences have been included in the bill. The bill makes it an offence to quote unrealistically high or low estimated prices for real estate. In the past, sellers have been misled by an expectation of obtaining a higher price than was reasonable. Buyers have been out of pocket, due to payment of finance and inspection fees, in the expectation that the property might sell at the lower price quoted by the agent. Now the Commissioner for Fair Trading can require an agent to justify the estimated selling price of residential property.

Agency agreements between agents and sellers must now be in writing; oral agreements will no longer be acceptable. Sellers of properties will be protected from being disadvantaged by unscrupulous agents. This measure will also afford protection in some cases for agents where instructions might not be entirely clear cut. This measure will enable home owners to better understand their rights and obligations under agency agreements.

Licensees must now disclose any relationship with a person to whom the agent refers a client or prospective buyer or benefits that might occur to them through a real estate transaction, aside from commissions, in dealings with their clients. This would include benefits received from a financier, a legal practitioner or another real estate agent. This reform will clean up instances of kickbacks and other benefits obtained by agents without the knowledge of clients. In addition, agents can no longer obtain a beneficial interest in a property that they are selling on behalf of a client without the consent of the Commissioner for Fair Trading.

The regulatory burden for agents will be lightened by granting greater flexibility in the keeping of accounting records and facilitating the better management of multi-agency businesses. The Commissioner for Fair Trading will now be able to grant an exemption

from the requirement that there be a licensee in charge at each place of business under a licence.

A register of licensed and registered salespeople and details of disciplinary action taken against agents will be maintained by the ACT Office of Fair Trading. The register will be available for inspection by the public. This reform creates a greater degree of transparency and openness in the disciplinary process for agents, sadly missing in the old act. The regulations will prescribe details of disciplinary action to be included in the register. The purpose of the register is to provide as much information as possible to assist consumers with the choice of appropriately licensed and competent persons.

The legislation makes it clear that licensees are responsible for the actions of their employees in tort and contract. Licensees will have no excuse to distance themselves from the wrongful actions of their employees.

A consumer compensation fund will continue to operate to protect consumers in the event of a financial collapse of a licensed real estate, stock and station or business agent. The bill also addresses concerns expressed by the Auditor-General over some years now about the manner in which interest is calculated on agents' trust accounts used to fund the operation of the regulatory system for agents. The bill now requires all banks to pay interest on trust money at 70 per cent of the bank bill rate.

Lastly, the bill does not alter substantially the licensing and other requirements for travel and employment agents.

Mr Speaker, I am confident that the reform proposal in the Agents Bill will improve the commercial working environment for consumers and agents in the ACT. My government remains determined to maintain the momentum of improvements, through further consultation with industry, consumers and other jurisdictions, as the regulations are developed.

I take the opportunity to thank all those who have made a contribution to the development of the bill, thanking them also for their positive reactions to the government's reform proposals. Not least amongst those people is former member of the Assembly Mr Harold Hird. I thank him for his thoughtful and useful comments, noting that he has been advocating many of these changes for a number of years now.

I commend the bill to the Assembly.

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

Legislation (Statutory Interpretation) Amendment Bill 2003

Mr Stanhope, pursuant to notice, presented the bill and its explanatory statement.

Title read by Clerk.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (10.41): I move:

That this bill be agreed to in principle.

This bill will complete the process of updating and clarifying provisions brought over to the Legislation Act from the old Interpretation Act. It will restate the provisions dealing with statutory interpretation to make the law in this area clearer and more coherent and make it take account of developments in the common law.

The provisions of the Legislation Act now proposed to be replaced were enacted in their current form some 20 years ago, in the Interpretation Act. They are well overdue for reform. The new provisions are restated in a simplified, updated and, where appropriate, enhanced way. They do not represent a dramatic change in the rules of statutory interpretation but reflect significant common law developments in the area in recent years.

For example, the effect of common law developments has been to establish the purposive approach to the interpretation of legislation; to stress the importance of legislation being read in context, including in the context of all its provisions; and to make obsolete many of the statutory restrictions applying to the use of non-legislative material, such as *Hansard*, explanatory statements, committee reports, and so on. The provisions of the bill reflect these developments.

Members will recall that a year ago I presented a bill to the Assembly including a reform along similar lines to the law of statutory interpretation, the Legislation Amendment Bill 2002. The Standing Committee on Legal Affairs indicated some concerns with the reform of the law of statutory interpretation represented by that bill. The ACT Bar Association also circulated a submission indicating its concurrence with the views of the standing committee and raised some additional concerns of its own.

At the time, my government acquiesced to the view of the Assembly that the reforms should be deferred, and I moved an amendment with the effect of maintaining the status quo for the time being, which members approved. However, I also undertook to pursue this reform in consultation with the ACT Bar Association.

The bill before the Assembly now is the product of that consultation process. The Bar Association has confirmed that it is satisfied with the modified proposals for reform in the bill. There were three areas of concern, each of which has been addressed in revising the reforms proposed in the bill.

First, there was a concern that the wider express sanction for the use of non-legislative material might tend to make the law less accessible and more costly. This concern is addressed by the preservation and reinforcement of existing safeguards against inappropriate regard being had to non-legislative material in interpreting legislation. A court will need to consider the ordinary meaning of a statutory provision in its legislative context and the cost of prolonging proceedings unnecessarily. In addition, a new consideration is introduced requiring a court to consider the public accessibility of the non-legislative material in weighing its significance.

Second, a concern was expressed by the standing committee that the mandate to consult a wide range of non-legislative material might give a court too much leeway to “mould”

the law in a way that trespasses on the doctrine of the separation of powers. This concern is addressed by the retention and reinforcement of the principles mentioned that safeguard against inappropriate use of non-legislative material.

Third, the Bar Association was concerned that the best purpose rule, as originally proposed, might extinguish common law rules and presumptions regarding statutory interpretation—for example, the presumption against interference with the liberty of the citizen. It was never intended to extinguish the operation of the common law in this sense. To ensure that there is no suggestion that this will be a consequence of the reforms, previously proposed provisions for the Legislation Act principles to have effect despite any rule or presumption of common law to the contrary have been dropped from the bill. The result will be to enable common law rules and presumptions to continue to operate in conjunction with the principles stated in the Legislation Act.

This bill will bring the ACT into line with the common law of statutory interpretation as it has developed over the last 20 years. While these proposals are by no means radical, they will put us in the vanguard of change in this area. The bill offers a reliable model for any other Australian jurisdiction pursuing reform in their legislation regarding statutory interpretation.

Mr Speaker, I commend the bill to the Assembly.

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

Gaming Machine (Cap) Amendment Bill 2003

Mr Quinlan, pursuant to notice, presented the bill and its explanatory statement.

Title read by Clerk.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism and Minister for Sport, Racing and Gaming) (10.40): I move:

> That this bill be agreed to in principle.

The Gaming Machine (Cap) Amendment Bill 2003 is a very simple piece of legislation that extends the current restrictions on the number of gaming machines that can be licensed in the territory. Currently, the Gaming Machine Act 1987 restricts the number of gaming machines in the territory to a maximum of 5,200. However, this restriction applies only until 30 June 2003.

The government is committed to ensuring that the extent of gambling is controlled within the territory. We are committed to encouraging harm minimisation measures in relation to all forms of gambling, particularly with gaming machines.

The ACT Gambling and Racing Commission has recently completed its comprehensive review of the Gaming Machine Act 1987. The review of the act is to ensure that the legislation meets community and regulatory needs. This review included extensive community consultation to ensure that the industry and the community had an opportunity to express their views.

I wish to emphasise that, as part of the review, the commission has addressed the long-term question of the number of gaming machines that ought to be licensed in the territory. The government is currently considering the commission's report and will ultimately present the Assembly with a properly considered proposal for the number of gaming machines that is appropriate to the ACT—or some formula for the setting of a limitation on the number of poker machines—along with the necessary controls for their operation.

While the government considers the commission's view of the act, it would be inappropriate for the restrictions on the number of gaming machines permitted in the territory to be relaxed. We do not want to pre-empt the outcome of the review that is in process.

It therefore makes sense to extend the current restrictions on the number of gaming machines that can be licensed for a further two years to allow for proper consideration of this comprehensive review and for legislative amendments. As I said, we may bring forward a whole different regime or ceiling or some formula at that time or some time between now and two years' time.

I commend the Gaming Machine (Cap) Amendment Bill 2003 to the Assembly.

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

Administration and Procedure—Standing Committee
Referral of standing order 210

MRS CROSS (10.49): I seek leave to move a motion.

Leave granted.

MRS CROSS: I move:

> That Standing Order 210 be amended as follows: add the following new paragraph:
> (a) Standing order 210 shall have no application to a Member who is breastfeeding an infant.

Mr Speaker, on 26 February this year, Labor member for Forest Hill, Kirstie Marshall, in the Victorian Legislative Assembly, innocently entered the legislative chamber just before question time. In her arms she carried her 11-day-old baby. She took up her seat and began breastfeeding her daughter, Charlotte.

Mr Speaker, breastfeeding is a natural human right of a mother and child that should be available whenever and wherever it is necessary. Unfortunately, a literal interpretation of the Victorian Legislative Assembly standing orders meant that the member for Forest Hill was ejected from the chamber.

It was a bizarre, antiquated reaction reflecting a bizarre and legalistic interpretation of an aged institution. It was not the action of a modern, progressive and democratic parliament. We must never forget that, when most of Australia's colonial parliaments

were created, women were neither eligible to stand for democratic office nor to vote to elect their representatives in parliament.

I am embarrassed that the member for Forest Hill had to endure the indignity of being humiliated—not only for being a woman, but also for being a mother. I am grateful, however, that her action shed some light on some antiquated practices that still exist in our parliaments.

It comes as no surprise to any of us here that politicians are held in disdain by a great number of people in the community. Chief amongst the reasons for that is that many voters witness so many double standards in public office. Nothing is more damaging to the reputation of a democratic institution like this Assembly than when we expect members of the wider community to live their lives by norms and standards that we ourselves are not prepared to live up to. In simple terms, it is called hypocrisy.

Section 7(1)(g) of the Discrimination Act 1991 makes it unlawful to discriminate against a woman who is breastfeeding. So it may, indeed, be a moot legal point whether a speaker's potential ruling against a mother breastfeeding would be in contravention of that act.

But do we ever want to envisage a situation where an MLA, now or in the future, sues the Assembly for relief because her right to breastfeed was impugned by a speaker's ruling? Clearly, a ruling such as there was in Victoria last month is ludicrous.

We have an obligation to put our house in order on this one. As you know, I and most people in this chamber usually strive to comply with the standing orders. Under your watchful eye, Mr Speaker, the forms and functions, precedents and conventions of the Legislative Assembly for the Australian Capital Territory are in good stead under your stewardship. But this is not about you or any other speaker; this is about a matter of principle. It is about the rights of a mother and her baby. But most of all, it is about how we politicians should be seen to be leading the community on these matters rather than betraying it with inconsistency and double standards.

In making my concluding remarks I am mindful that the usual convention for amendments to standing orders is for them to follow the pathway set out in standing order 16(1)(a)(ii), which provides for the Standing Committee on Administration and Procedure to:

> (a) inquire into and report on, as appropriate:
> (…)
> (ii) the practices and procedure of the Assembly;

—the operative word for me here is "appropriate". The standing orders are here to support our democratic processes, but sometimes they can be used to stifle reform and progress.

I note with a certain amount of disdain that the opposition will be seeking to express its opposition to this motion of mine by ferreting it off to a committee. I will not stand for that. If ever there was a time when we should dispense with the formalities of the

Administration and Procedure Committee, this is one of those times. I urge fellow members to embrace the simplicity of this amendment and not strangle this reform. In my view, it is not "appropriate" that the committee inquire into this reform this time.

I am led to believe that if we pass this motion, it will be the first time that such a motion has occurred in any parliament in the world. On this day, a number of days after International Women's Day, it is an important reform and an important message that we send, not only to the community of Canberra but also to the rest of the nation and the rest of the world. That message is that mothers and babies are never to be discriminated against for the reason that they are breastfeeding.

I dedicate this motion not only to the mothers of Canberra but also to the wonderful work of the women of the Australian Breastfeeding Association. I commend the motion to the house.

MS TUCKER (10.55): I am very supportive of the intent of this motion. I agree that the application of the strangers rule is not appropriate for a woman who is breastfeeding. I agree that it is a bizarre situation for our parliament to pass laws to protect breastfeeding women against discrimination in the workplace and elsewhere but not allow breastfeeding in our own workplace.

Having said that, I have moved an amendment, which I have circulated. I think it is important that we take the time to look at this in the Administration and Procedure Committee. There is no urgency for this. There is no woman at the moment with a baby in the Legislative Assembly who wants to breastfeed and, as I understand it, the Speaker would not call it a problem anyway, so we do not have to worry about that.

Mrs Cross has put it that somehow opposition would be trying to ferret this away and that we have some kind of motivation—I cannot imagine what she thinks the motivation would be. But I need to explain why I think it is appropriate for this to go to the Administration and Procedure Committee at the same time as I am absolutely supportive of the basic concept of women with an infant being able to breastfeed in the Legislative Assembly.

The reason is that I have already consulted, as much as I could in the couple of days I have had, with the Australian Breastfeeding Association, who have said themselves that it would be useful for this to go to Administration and Procedure. The Australian Breastfeeding Association has said that it may be useful to take the World Health Organisation definition of what an infant is. The WHO says that it is absolutely critical that a woman is able to breastfeed her baby up to six months. In fact, they are one. That is the notion behind the World Health Organisation definition.

I breastfed my children until they were over two years old, so I am not saying this is about breastfeeding for only six months. What I am saying is that Mrs Cross is proposing to change the standing order at this point in time in a way that leaves it very open. It is quite possible that everyone is happy for a two-year-old to be breastfed in the chamber, but I think we need the time to have that discussion.

And as I said, there is no urgency about this. It is good process when we change standing orders to at least have a discussion, and I am sorry Mrs Cross thinks that is unacceptable.

I think she has the support of everyone in this place for the intent of her motion and that everyone here agrees that it is fine to breastfeed an infant in the chamber. Maybe I am wrong; maybe some people do not like it.

Mrs Cross: Yes. I do not think everyone does, Kerrie.

MS TUCKER: Mrs Cross said some people do not agree with that. Okay, well those people can speak; those people can say that. But I would say that the majority of people in this Assembly agree that it is appropriate for an infant to be breastfed by its mother if it is the workplace. We have laws in the country which say it would be discriminatory not to do that. I do not think there is any doubt that this will get up in the Legislative Assembly.

This discussion is about whether or not we take the time. And Mrs Cross—all credit to you for raising this in the Assembly. It is great that we would be the first parliament to do it. It's fine; that's good. But we are just saying we want the time to look at the wording exactly. As I said, in the brief time I have had to talk to people, the Australian Breastfeeding Association has said that the six months issue may need looking at—maybe it doesn't.

It is a perfectly reasonable and sensible for us today to refer it to the Administration and Procedure Committee. It would not have to take a long time. You could invite the Australian Breastfeeding Association representatives here to address the Administration and Procedure Committee. They have told me they would be happy to do that, so we have the opportunity to have that discussion.

I seek leave to move the amendment because I think it will probably cut across the anticipated debate rule, but as an Assembly we can decide to do that.

Mrs Cross: Point of order, Mr Speaker. Under standing orders 59 and 130, this amendment cannot be put through. I will read it out:

> A Member may not anticipate the discussion of any subject which appears on the Notice Paper: Provided that in determining whether a discussion is out of order on the ground of anticipation—

Mr Cornwell: Point of order.

MR SPEAKER: Mr Cornwell, just wait until Mrs Cross finishes with her point.

Mrs Cross: It continues:

> regard shall be had by the Speaker to the probability of the matter anticipated being brought before the Assembly within a reasonable time.

Mr Cornwell: You love getting your own way, don't you?

Mrs Cross: I am reading the standing orders.

Mr Cornwell: I am sorry, but Ms Tucker was speaking.

Mrs Burke: Absolutely.

Mrs Cross: Ms Tucker sat down and then I stood up, Mr Speaker.

MR SPEAKER: Thanks for your point of order, Mrs Cross, and your reference to the standing orders. Ms Tucker was about to seek leave to move her amendment. She has sought leave? Is leave granted?

Leave granted.

MS TUCKER (11.00): Thank you. I move the following amendment circulated in my name:

> Omit all words after "That", substitute the following words:
> "application of SO 210 to a Member breastfeeding an infant be referred to the Standing Committee on Administration and Procedure for consideration and report to the Assembly."

I have already spoken to that amendment, and I ask members to support it.

MRS DUNNE (11.01): I would like to speak substantially on the amendment and, in doing so, address the substantive motion. First of all, I would like to congratulate Mrs Cross for breaking her duck after six months on the cross benches and getting some business on the notice paper.

It is a shame that the first business that the new independent member for Molonglo brings on the notice paper is not about the residents of Molonglo but about us. It is an issue that is worth discussing, and I agree with Ms Tucker that it has to be discussed. But hang on—let's do a straw poll in here. Who is lactating at the moment? No-one is lactating at the moment, so there is no urgency that we debate this and decide on this today.

It is inappropriate for Mrs Cross' motion to attempt to circumvent the normal means of amending standing orders. It is great to see members of this place extolling the virtues of being a family friendly workplace. I think that is very important.

Mrs Cross has alluded to the fact that the opposition would not support her on this, but she has no evidence for that. What she has is the evidence of the *Canberra Times* article that sought the views of two individual members of the opposition who expressed some reservations. But I am prepared to go through the process of having a conversation about the best way to do this.

I think the Clerk and his staff and the Speaker and his office would have some input into addressing what might be an anomaly. Mrs Cross is correct to say that when the standing orders in the Victorian Parliament—which we emulate—and most other parliaments were written, it was not even considered that women become members and they often did not even have the right to vote.

It is time that we address this issue; it is time that we do all we can to lead by example by creating a family friendly environment where we work—which is what members of this

opposition have done over the years. I have benefited from being able to bring my children to work when I was a staffer for the Liberal Party and, because I am now a member, I have the capacity to do that.

Mr Pratt has also had a staff member who brought children to work. It is a shame that some of the former staff of the opposition and some of the former members of the opposition actively lobbied to have that staff member take her child into child care because they did not like to hear the sound of the odd cry and a little bit of pattering of tiny feet up the hallways from time to time. It is a shame, talking about double standards and hypocrisy in this house, that the member who tried to have that woman put her child into child care is now moving this motion today in favour of breastfeeding.

Mrs Cross: That is nonsense. On a point of order, Mr Speaker, I refer to the standing order on misrepresentation. I have never done such a thing, and I ask this member to withdraw that statement.

MR SPEAKER: Order, order!

Mr Cornwell: What standing order?

Mrs Cross: This member has just misrepresented me, and I want her to withdraw that statement.

MR SPEAKER: Resume your seat, Mrs Cross. You are entitled to seek my leave to make a personal statement in due course, but I do not think there is a point of order there.

MRS DUNNE: The Liberal opposition will be supporting Ms Tucker's amendment to refer this to Administration and Procedure. We have had very cumbersome contretemps in the corridors of this place this week over this issue. It would have been very simple for Mrs Cross to come in here today to move her perfectly reasonable motion that is already on the program and refer this matter to Administration and Procedure, but we have had to have another drama over this and I am not minded to bow to the need to have drama.

It does not matter whether we are the first or the third or the fifth legislature in the country to change the standing order. The point is that we do it properly with full regard for all the members. I am sure that there are members, both male and female, who would not be desperately comfortable about the notion of breastfeeding in the chamber. Personally, I would not breastfeed in the chamber, because I would not be able to give the appropriate attention to the child if I am concentrating on debate. I should be somewhere else; I would be quite happy to do it in the lobby.

That is what happened to Kirstie Marshall the other day. She was not ejected; she was not ruled out of order by the Speaker. She was directed by an attendant, who suggested she would be more comfortable if she went into the nicely appointed lobby that they have for this purpose. She was not ejected. I raised this question at the time, and I raise it here today: how much of this was Kirstie Marshall being an innocent dupe of the Labor government, who probably want to make substantial and overdue changes to upper house procedures and the electoral system and used this as a stalking horse to show how antiquated parliamentary procedures are.

Parliamentary procedures—here, as elsewhere—are all a matter of convention and rely on precedent. From time to time we move slowly, but there is a reason for that. I think that, by supporting Mrs Cross's motion as it currently stands, we would be throwing out—dare I say it?—the baby with the bath water. No, that is probably tasteless.

We are not going about this the right way. There needs to be consultation with members of the community who have views about the way breastfeeding should be conducted. The Clerk and his staff have some views about how we might address this in a simple and streamlined fashion. I think that the Administration and Procedure Committee is the appropriate forum in which to have that debate, not the floor of the chamber.

MS MacDONALD (11.07): I rise to support Mrs Cross and to commend her for bringing this matter to the floor of the chamber. I disagree with what Mrs Dunne has just concluded: that it is not appropriate for this matter to be discussed in this place. The final authority rests with the Assembly and, while it may be argued that there is the broader issue to be considered of strangers on the floor, it is quite appropriate for the Administration and Procedure Committee to consider that broader issue and report back. But the mother nursing a child issue, where a mother can be ejected, is so obviously a matter of discrimination that it can be rectified immediately. There is no problem. There is no major issue for Administration and Procedure to actually deliberate on.

There is a substantial body of scientific research to show that breastfeeding provides important health benefits to both mother and child. For children, the benefits of breastfeeding last a lifetime. Medical authorities all agree on this. By choosing to breastfeed, a mother is choosing to give her baby the food that provides the child with the perfect blend of nutrients for optimal growth and development.

Other research has shown that community attitudes to breastfeeding play a large part in determining whether a mother decides to breastfeed. I repeat: community attitudes. We recognise that mothers today have many pressures on them, and we often talk of family friendly workplaces. So, this Assembly should provide a lead to the community to support mothers who make the choice to breastfeed.

When a woman is returning to work while her baby is young, the attitude of colleagues at work is particularly important. That is where we can be leaders. We can say there is no issue here to send off to Administration and Procedure to discuss whether or not it is appropriate. To those members who might be concerned about babies being breastfed causing disruption to this place, I suggest that would only cause disruption for those people who wished it to be disruptive, and it would cause less disruption than a lot of members cause in this place from time to time, might I suggest.

In short, I commend Mrs Cross for having brought it here to the floor. I do not see that there is a problem in passing this motion today. We can resolve the issue today. Of course, there is the stranger on the floor issue, which will need to be resolved, and I do not think resolving this issue here and now creates such a bad precedent.

MR CORNWELL (11.11): I am a little concerned that the original motion here is so dogmatic. It refers something to the Administration and Procedure Committee simply to rubber stamp. It refers for consideration and report:

> An amendment to standing order 210 to allow a member of the Assembly who is breastfeeding an infant to be exempted from the provisions of Standing Order 210.

I find that extraordinary from somebody who purports, repeatedly, to represent a society that is centuries old and is the home of democracy.

Therefore, I welcome Ms Tucker's amendment because it gives an opportunity for the entire question to be considered by the Administration and Procedure Committee, which is perfectly right. Let me read standing order 210:

> While the Assembly is sitting a Member may not bring any visitor into, nor may any visitor be present in, any part of the Chamber appropriated to the Members of the Assembly.

That does not prevent breastfeeding in the galleries but in parts of the chamber "appropriated to members of the Assembly", That is all. There is no problem. That is an aspect that needs to be considered by the Administration and Procedure Committee in accordance with Ms Tucker's sensible amendment to this original motion.

We can look at this because we do not have to canvass only the question of breastfeeding. Why don't we allow advisers onto the floor of the house, for example, Mr Speaker? Surely their attending the floor of the house would be a little more regular than somebody wanting to breastfeed.

The other point that needs to be considered in relation to this is the size of this Assembly and the generosity that is extended in terms of pairs. If a member of this Assembly was breastfeeding, I do not think there would be any problem about her having a pair in order to breastfeed. There is a perfectly good chamber lounge out there behind your chair, Mr Speaker, which she could use for that. There are a number of options. It seems to me that the woman in the Victorian Parliament was extremely poorly briefed on the practices of the house if she was not aware that this was not allowed. In fact, one could be forgiven for imagining that it was a political stunt.

I would hope that, in looking at this matter, Administration and Procedure would also consider the extent of discrimination that may or may not exist in other parts of society. I do not know whether clubs allow breastfeeding at poker machines. What happens at a funeral or a wedding? I do not know. What happens in the middle of communion at a church? I do not know. These are issues that need to be canvassed by any investigation into this matter by this parliament.

But bear in mind that the concept of strangers in the chamber has been around for many centuries, and the idea was to allow members to conduct their business in a degree of privacy—I won't say silence; I accept Ms MacDonald's comments earlier about that. We did not end up with Hogarth's gin lane or anything—those 18th century paintings where people seemed to be all over the floor of chambers of the law and even at court. There were dogs and all sorts of things around.

If we are going to be able to do our business properly here, then we need some form of privacy. I do not object to this matter going to Administration and Procedure, certainly under Ms Tucker's sensible motion. I do not know, to read from a media release that I

received yesterday, that the motion will lead the world on reform. The information I received today indicates that may not be the case.

But I do not know that the citizens of Nome, Ulan Bator, Puerto Maldonado or even Salonica would be falling over themselves with amazement at this matter coming up here. Like my colleague Mrs Dunne, I would welcome the involvement of Mrs Cross in matters pertaining to constituents rather than to matters pertaining to this chamber—and, may I say, a matter pertaining to this chamber that is not of major concern at the moment. I take Ms Tucker's point that there is plenty of time to examine this—unless, as far as the female members are concerned, there is something I do not know.

That said, I believe that it is important that we allow time to examine this matter. It does not need to be rushed. I do not think it will be a groundbreaking decision, whatever may come down—although I must admit that putting a motion of dissent from the Speaker's ruling on the notice paper is certainly a world first in my knowledge. I had always understood that motions of dissent were to be acted on immediately. However, that is another matter and I will leave that to Mrs Cross to consider for herself.

Therefore, I am happy to stand here and say that I support Ms Tucker's amendment to this extremely dogmatic motion, and I trust that other members will have the good sense to support the amendment as well.

MS DUNDAS (11.20): At this point I will address solely Ms Tucker's amendment and express my support for it. There are many things that need to be considered when we are amending the standing orders of this place. When we go back to debating the in-principle motion, I will make quite clear my support for the intent of what Mrs Cross is trying to do today and the need to re-examine our society's attitudes to working mothers and mothers who are breastfeeding.

If we are trying to build this Assembly into a family friendly environment, there are a number of issues that need to be explored. I believe that the Administration and Procedure Committee could be the best way to do that.

Just a quick flick through the standing orders raised the question for me of what happens if we fix this for the chamber but do not fix it for committees. Standing order 236 says:

> When a committee is examining witnesses, visitors may be admitted, but shall be excluded at the request of any member, or at the discretion of the Presiding Member of the committee, and shall always be excluded when the committee is deliberating.

That, I believe, is the standing order that we need to fix in relation to breastfeeding mothers. The visitor that is with them could be asked to be excluded by any member, which would reconfirm the discrimination that breastfeeding mothers face. Administration and Procedure, if they had had the opportunity to examine this change to standing orders, would have found that and would have been able to move an amendment to both of these standing orders at the same time and not have this confusion.

I also believe that Administration and Procedure, when examining the need to have breastfeeding mother friendly workplaces and family friendly workplaces in this building, would have discovered that there are no change room facilities in this

building—at least, not to my knowledge—and that needs to be fixed. They would have discovered a lot of other issues about having small children in this building—be that in the chamber or in this building—that need to be addressed, not just for members of the Assembly but for the 100 staff who also work in this building. Administration and Procedure could examine that.

Yes, this is a matter of discrimination that needs to be fixed promptly, but we are debating other pieces of legislation dealing with discrimination that were tabled four months ago. In those four months a number of amendments were put forward because we discovered that we had not got it right in the first instance. We needed that time to bring forth those amendments to make sure that, when we are removing discrimination, we are doing it the right way and we are doing it the right way first time.

So I support the referral of this matter to the Administration and Procedure Committee because I believe it is an important issue that is broader in scope than just a woman sitting in this chamber with a child, breastfeeding. They have work to do in committees and every staff member in this chamber has a situation that needs to be explored in terms of a work friendly environment. I think it is important for the Administration and Procedure Committee to examine that.

MRS BURKE (11.24): I think I understand the intent of Mrs Cross's motion today

Mr Stanhope: Yes—that women should be allowed to breastfeed in the chamber.

MR SPEAKER: Order, Chief Minister!

MRS BURKE: You'll get your turn, Mr Stanhope. However, I am disappointed that this matter has been raised in the house today. I am concerned that, whilst it may be an issue in other ordinary workplaces, I do not think that houses of parliament or houses of assembly and the like are what could be classed as ordinary working places.

I am further concerned that we are here talking about this matter when I believe it should have been directly referred to Administration and Procedure for their consideration. That is why I am appreciative of Mrs Tucker's amendment today. Why are we therefore wasting precious ACT taxpayers' money on giving this issue time at all, when there is a committee fully equipped and very competent to deal with the matter in a careful and considered manner? I am not saying the matter is not worthy of discussion.

Breastfeeding, in my personal opinion, is one of the most natural and important functions of a woman for her baby. I breastfed my daughter, and I am fully supportive of breastfeeding. However this issue is not about breastfeeding per se; it is about the protocol and according the appropriateness of such an activity in this place.

It is about the obvious distractions that occur. With breastfeeding we know that we have to burp a baby, and a baby could be sick. I am just thinking of the practical issues. I am concerned that we will set a precedent for other activities to occur in this place. Do we then allow toddlers to run around and play quietly by our side with toys? It is an issue, as Ms Dundas says. I totally agree that we need to look at it and that it needs to be addressed as a whole—but not in this place. It is for a perfectly set up committee to decide.

I believe it would undermine the day-to-day activities of a place of such stature as this if we were to allow this activity to continue. Mrs Cross talks of humiliation in regard to breastfeeding. I would suggest we consider the feelings, rights and humiliation of those on the other side of the fence, and in particular the embarrassment it may cause to others in the chamber. It is not embarrassing to me; I would not mind seeing any woman breastfeeding.

No one is questioning Mrs Cross' support of breastfeeding—certainly not me. But, surely, we must maintain a certain level of decorum in such a place as this. There are ample facilities here to accommodate lactating mothers. On either side of the chamber we have a perfectly good lounge. I am all for this matter going forward. I therefore support Ms Tucker's amendment that this matter be referred to Administration and Procedure.

MR PRATT (11.27): I rise to support Ms Tucker's amendment. I believe that the issues surrounding breastfeeding need to be aired in this place. Mothercare in this place needs to be secure, so I am quite pleased that this issue has been brought to the fore. However, I am deeply angry and concerned at the shallowness of Mrs Cross's motion, and I wish to record my concern.

I had a staff member who was breastfeeding, and that member was forced to remove her child. I had allowed that member to breastfeed her child in my office, and three female dinosaurs in my parliamentary opposition party grouping were responsible for that. I have it on very good authority that Mrs Cross was one of the three.

Mrs Cross: That's a lie! That is a lie!

MR SPEAKER: Order! Mrs Cross withdraw that.

Mrs Cross: That is a lie!

MR SPEAKER: Resume your seat, Mr Pratt. Order, Mrs Cross! Withdraw that.

Mrs Cross: What he said was a lie.

MR SPEAKER: Withdraw it, Mrs Cross.

Mrs Cross: If he withdraws the lie. That was a lie.

MR SPEAKER: Mrs Cross, I order you to withdraw it.

Mrs Cross: I withdraw.

MR SPEAKER: Thank you.

MR PRATT (11.28): Thank you, Mr Speaker. As I was saying, my parliamentary party colleague was forced to remove her child from this place.

As MLAs, we are supposed to be straight shooters. If we are going to bring issues into this place we need to be genuine about them. Mrs Cross is about as genuine at securing mothercare as I am about giving Saddam six more months to disarm. It is against this background that I rise to express this concern. If we are going to bring serious issues to this place, we cannot exercise hypocrisy.

MR SPEAKER: Mr Pratt, I think you can withdraw “hypocrisy”.

MR PRATT: I so do, Mr Speaker.

MR STEFANIAK (11.29): Ms Tucker and Ms Dunne made some very good points about the need to get the views of the community. We have facilities here, and for the life of me I cannot think how the chamber would be conducive to breastfeeding a child, with all the nonsense that goes on here.

I note from an article that breastfeeding was banned from the mother of parliaments in 2000 when someone tried to do it there. The comment was made that we would not be the first. The Norwegians have been breastfeeding for over 20 years, apparently.

I close by expressing the views of a woman who was quite angry at the prospect of this Assembly allowing breastfeeding in the chamber. She saw it not so much as snouts at the trough but as politicians making rules for themselves. She said that you could not possibly have checkout chicks and shop assistants breastfeeding and that you do not see judges and magistrates breastfeeding. She saw this as politicians making a rule for themselves when ordinary people could not benefit from a similar rule.

It is important for ordinary members to have a say on this. There are a lot of issues. Ms Tucker’s amendment is a sensible one. It will enable all the issues to be canvassed.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (11.32): Mr Speaker, the government will not support Ms Tucker’s amendment. We will support Mrs Cross’s motion.

I am deeply surprised that members of this Assembly believe that an issue as simple and as straightforward as whether or not a female member of this place should, if she so chooses, have the capacity to breastfeed her baby in this chamber requires consultation with the community or requires further and detailed consideration by a committee of this place.

On what basis do members of this place think that this issue needs to be the subject of consultation with the community or deep consideration by a standing committee of this place? What is it about the notion of female members of this place breastfeeding in this chamber that other members believe needs further consideration? What doubts do Ms Tucker, Ms Dundas and the Liberal Party have about the notion of female members breastfeeding in this chamber?

What is it that this standing committee is going to add to the consideration of this issue? Are they going to say yes or no? Why can this parliament not say yes? I think it is an

almost inalienable right of women to choose to breastfeed their babies in their workplace. It is an almost inalienable right in terms of our understanding of the importance of breastfeeding. Yet the Liberal Party, the Greens and the Democrats are saying that this issue needs to be further considered; that we need to consult further on whether working women should have the right to breastfeed in their place of work.

What is it that you want to further consider? What is it that you want to weigh up on the scales of whether or not working women in their place of work should be entitled to breastfeed their children? It is such a simple, straightforward notion. You either support it or you do not. One has to assume that those who cannot stand here today and support it do not support it; that they have concerns about this right of working women to care for and nurture their children in the way of their choosing.

That is all Mrs Cross is seeking to achieve—for this parliament to say in its operational rules that there should be no prohibition against the feeding by breast of children in a working woman's place of work. It is such a simple notion. Why would this parliament send a signal that it is not a right that we as a parliament are prepared to allow without some deeper community consultation. I cannot imagine what form that consultation would take.

Should we as a parliament, as a workplace, not allow women to breastfeed? I am prepared to stand here now and say that I cannot countenance the prospect that we as a workplace would deny working women in this place the right to breastfeed in this chamber. I cannot countenance the possibility, and I cannot imagine what the motives of those who do are. What is there to further consider? Why can the 17 members of this place not say here and now, "Yes, women should be able to breastfeed in this place, so let us change our operational procedures, our standing orders, to ensure that that can happen"?

MS TUCKER (11.36): I seek leave to speak again.

Leave granted.

MS TUCKER: I need to answer some of Mr Stanhope's questions on my amendment. Maybe he was not here before—I am not sure.

Mr Stanhope: Yes, I was.

MS TUCKER: You asked what the doubts were. I thought I had explained them, but maybe you were not satisfied with the explanation.

Mr Stanhope seems to imply that by asking for this matter to go to the Administration and Procedure Committee we are sending a signal to the community that it is not all right to breastfeed in the workplace. That is certainly not my intention. I thought I made it clear at the beginning of my speech that I am of the view that breastfeeding in the workplace is a right.

I am concerned about rushing this motion through. I have not had a chance to look at the words. Mr Stanhope now has to amend the words because they are not correct or are very unclear. There are issues that need to be talked about in the committee—the definition of

infant and so on. I am fine with people breastfeeding children till they are four. I know someone who breastfed their child till four. That is fine. If the government and everyone else is happy with that, that is fine. If we are creating a standing order that says a breastfeeding mother can bring her child, of any age, in here, that is fine. I just want to understand what we are saying.

If people think that "infant" means under six months, as in the World Health Organisation definition, that is fine too. I think it could be older than that. That is what we need to discuss. It is about clarity. It is certainly not about sending a signal to the community that the Greens and the Democrats are saying that we do not think women should be able to breastfeed in their workplace. That is a serious misrepresentation of what I said and what Ms Dundas has said.

MR SMYTH (Leader of the Opposition) (11.39): Mr Stanhope started his speech by saying he is deeply surprised. I do not think any of us were at all surprised by the Labor Party's support for Mrs Cross, who is rapidly becoming known as the independent Labor member for Molonglo. Mr Stanhope's speech is an indication of that. To misrepresent the Greens and the Democrats as he did is becoming his stock-in-trade. Ms Tucker beat me to the point—

Mr Quinlan: I take a point of order, Mr Speaker. I am not allowed to talk about parroting misinformation. I was picked up on that. If that is the standard, I think Mr Smyth has breached it.

MR SPEAKER: No, Mr Quinlan.

Mr Quinlan: So I can say that misrepresentation is someone's stock-in-trade?

MR SPEAKER: Mr Quinlan, just resume your seat and I will tell what you were picked up on. You were picked up on saying "deliberate misinformation". It had nothing to do with "parroting misinformation". Mr Smyth said that the Chief Minister was misrepresenting the Greens and the Democrats. It is up to Mr Stanhope to challenge that. If Mr Smyth were to say that Mr Stanhope was misleading this house, then it would be a different matter. But he was not saying that.

MR SMYTH: Mr Speaker, I was simply confirming what both the Greens and the Democrats had said.

Mr Stanhope: I take a point of order, Mr Speaker, now that we have gone this far. The Leader of the Opposition did mislead the house in saying that I misrepresented the Greens and the Democrats. All I did was ask a rhetorical question about how their attitude in this debate would be represented.

MR SPEAKER: Order! Mr Stanhope, you have to withdraw your claim that the Leader of the Opposition misled this house.

Mr Stanhope: Is that right?

MR SPEAKER: Yes.

Mr Stanhope: I withdraw the suggestion that the Leader of the Opposition misled the house. But I did not misrepresent the position of the Greens or the Democrats. I simply asked a rhetorical question.

MR SPEAKER: You do not have a point of order.

MR SMYTH: Clearly, Mr Stanhope's amendment would indicate that this is a poorly thought out motion. He has brought to the attention of the house some of the difficulties that others have picked up.

I agree with Ms Tucker. What is your definition of an infant? I have just been speaking to a gentleman whose wife is about to wean their infant at 12 months. Do you limit it to six months? I have a friend who fed her child until the child was five years old. Is "a feeding child" unacceptable? That is the dilemma. As Mr Cornwell asked, do you, Mr Speaker, eject a crying baby from the house?

There are some operational issues that need to be thought out. I think the points that have been put forward are reasonable and valid and should be taken into consideration so that we get it right, so that we do not mismanage it and make a mockery of what people are trying to achieve.

The motion and the press release that said "ACT Breastfeeding motion to lead the world in reform" are more about trying to be relevant than trying to improve things. Norway put this reform in about 20 years ago. I understand that Sweden and several other jurisdictions have also done so. Neither is it world-breaking, nor is it reform. It is certainly a progression. We should look at it, and if it can be accommodated then it should be accommodated. Ms Tucker's proposal is a far wiser way of doing it than a motion that is clearly flawed, as evidenced by the Chief Minister's amendment.

MRS DUNNE (11.43): Mr Speaker, I seek leave to speak again.

Leave granted.

MRS DUNNE: I need to clarify something I said. Ms MacDonald rightly pointed out that I said that there is no place for this discussion here. What I should have said, more accurately, was that the Administration and Procedure Committee is the place to have the detailed discussion. I understand that the Clerk has some suggestions about how we might approach this. We now have an amendment to the motion.

Let us work it out in a cool, calm way and discuss the best way to do it. The Speaker of the Victorian parliament has approached it in one way. That might be a solution here. We may not need to amend the standing orders. As Ms Dundas has said, we might look at other issues relating to breastfeeding in this building, not just in the chamber.

Question put:

> That **Ms Tucker's** amendment be agreed to.

The Assembly voted—

Ayes 8		Noes 9	
Mrs Burke	Mr Smyth	Mr Berry	Ms MacDonald
Mr Cornwell	Mr Stefaniak	Mr Corbell	Mr Quinlan
Ms Dundas	Ms Tucker	Mrs Cross	Mr Stanhope
Mrs Dunne		Ms Gallagher	Mr Wood
Mr Pratt		Mr Hargreaves	

Question so resolved in the negative

Amendment negatived.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (11.48): I move:

> Omit all words after "paragraph:" and substitute the following words:
>
> "(a) the word "visitor" in Standing Order 210 shall not apply to an infant being breastfed by a Member".

Mr Speaker, the amendment does not change the intent or the import of Mrs Cross's motion in any way. It simply adds some certitude where some may think there is some ambiguity about the full ambit of the wording of Mrs Cross's motion. My amendment does not change the content, the import or the impact of Mrs Cross's motion in any way. It simply makes it clear that the exception from the standing order applies to the breastfeeding infant and not to the member.

MS DUNDAS (11.49): First, I would like to answer the question that Mr Stanhope put in his earlier speech. I support women breastfeeding and I support women continuing their work as they breastfeed. Any suggestion to the contrary is wrong.

The amendment Mr Stanhope has moved clarifies the wording of the standing order. I am supportive of that. I am also supportive of the intent of Mrs Cross's motion. It is certainly symbolic of the broader issue facing many families in Australia of how to juggle work and family life.

This motion was sparked by Ms Kirstie Marshall, the member of Forest Hill in the Victorian parliament, who in her first week in office caused a furore when she was breastfeeding in the chamber and was asked to leave because she had a stranger in the house. This caused a media frenzy, locally and internationally. It made the news in Canada and Ireland. It was even the subject of a comprehensive photo essay in Philadelphia in the United States.

Parliamentary Speakers around the country were asked to comment. Our Speaker said that there was unlikely to be a problem. In the Northern Territory, a change to the standing orders has been proposed. We see today that in Victoria the Speaker, having consulted with all members of the Victorian parliament, has ruled that babes in arms are now exempt from the stranger rule.

I have read many letters to the editor and listened to talkback radio. The issue has raised opinions from all quarters. Some objected to Ms Marshall breastfeeding in public. Others stated that breastfeeding in the noisy environment of parliament was not good for the baby. Some people were offended that Ms Marshall was asked to leave. The term "cheap politics" was levelled at all sides of the debate. The archaic phrase "stranger in the house" opened up its own debate.

Further, Ms Marshall's mother, who is a part-time electorate officer for the member, is being accused of being an overpaid babysitter. It seems that we cannot get our head around mothers in work, let alone grandmothers in work. I believe that much of the debate on breastfeeding rings of hypocrisy.

We live in a society which finds it acceptable for women to wear bikini tops to the shops and anything you like to the public pool and an advertising industry that is happy to place women in scantily clad underwear to sell anything from tampons to tractors. Yet many in the community are critical when they see a woman bare her breasts for the natural purpose—to breastfeed a baby.

Today women tend to be older when they have their babies, with the median age of first-time mothers being around 30. Family size is reduced and breasts are seen primarily as sexual objects rather than the source of nutrition for babies. Some young women may rarely, if ever, see a baby at the breast before they themselves become pregnant. They may feel uncomfortable or even embarrassed about breastfeeding in front of friends and family, much less when out and about in their daily lives. Men who see breasts as only sexual objects may worry about their partners feeding in public, possibly in a type of juvenile jealousy. Many women feel that they must hide themselves away to breastfeed. Then it becomes unnecessarily difficult or restrictive, and they may end up choosing to wean early.

Discrimination laws in the ACT quite clearly prohibit discrimination against a person on the basis of her status as a parent. While in other states legislation explicitly notes breastfeeding, that is not something this Assembly has yet considered.

Whilst trying to measure community attitudes on breastfeeding, the South Australian Health Commission surveyed over 3,000 people in 1998 and found that 83 per cent of people believe bottle feeding in public places is more acceptable practice than breastfeeding. Not surprisingly, the study also showed that breastfeeding mothers feel extremely uncomfortable when breastfeeding in public. So the community would rather not see it, and mothers feel uncomfortable doing it.

This issue has again hit the media. What we need to do is look at how we as a society can fix the mix between work and family life. People should not be uncomfortable breastfeeding in public, and they should be allowed to do it as they continue their work. Long and varied hours, casual or part-time work, shift work, smaller families with less connection with extended families and the lack of affordable child care are some of the factors that create an imbalance between work and family life.

Some workplaces now have an increased awareness of the importance of an individual's family responsibilities, and this is included in workplace policies. Unfortunately,

however, it seems that the issue of breastfeeding is still left up to a woman to discuss with her employer on an individual basis, if she is comfortable enough to do so.

There is a role for the Assembly in providing leadership and making the statement that we feel comfortable with women as mothers in this Assembly. I hope that the debate today will lead to further discussion not just about how we can make the lives of working members in this Assembly more comfortable but about how we can make working mothers in this building more comfortable and possibly how we can make the lives of all working parents more realistic and more suitable to current working conditions.

It is unfortunate that this debate has become so political and that the processes of this Assembly have been deemed unimportant as we are trying to fix such an important issue for working mothers and for working parents in our community.

If we are to address the issues of working mothers and more family friendly conditions, we need at least three things to happen. We need a welcoming attitude from staff and management, a smoke-free environment and room to move a pram. I am sure that we in this building would hope to be able to pride ourselves on finding all three in this place.

We spent most of Tuesday and are going to spend most of this afternoon speaking about removing discrimination against Canberra's queer communities. Just imagine the added uproar if the mother had been a lesbian who had conceived through IVF rather than a mother who had been an Olympic champion. I wonder how tolerant talkback callers would have been then about the rights of working mothers.

To sum up, I am happy to support this amendment to the standing orders. I believe that we need to have further discussions and look at further processes. We need to look at the issue of members in committees and we need to look at the issue of all working mothers in this building and in the community. I hope that this move today sparks further changes.

MRS DUNNE (11.57): It seems that this motion is going to go through. I do not have a problem with the wording of the standing order as it will turn out in the end. But I think it is incumbent upon the Chief Minister to define what he means by infant. Somewhere along the line you, Mr Speaker, or one of your successors may have to make a ruling. If the standing order is vague about what an infant is, it is incumbent upon the Chief Minister to define what he means by an infant.

Amendment agreed to.

MRS CROSS (11.58): I thank members, specifically government members, for their support for my motion. This independent member did not bring this motion on to secure relevance. That is something that Mr Smyth is still trying to do.

The dinosaurs that Mr Pratt referred to may have been in his office, but they were not in mine. I am known in this Assembly for welcoming children. I have never taken any issue with women breastfeeding. Mrs Dunne is aware of this. I spent quite a bit of time with not only her children but also Mr Stefaniak's children. I have never taken issue with breastfeeding. I do not like the fact that the opposition is using this debate to mislead this Assembly on issues, when they have already set a trend of doing that.

Mr Smyth: I take point of order, Mr Speaker. The member must withdraw that.

MR SPEAKER: Mrs Cross, it is disorderly to imply that members are misleading the Assembly. If you wish to deal with that matter, you have to do it with a substantive motion. I would ask you to withdraw that.

MRS CROSS: I withdraw, Mr Speaker.

MR SPEAKER: Thank you.

MRS CROSS: One member of the opposition referred to the noises that would be made by a baby being breastfed or the burping that would necessary. Some of the noises in this Assembly during question time or a very lively debate would be louder than that.

Mrs Dunne referred to humiliation. It was embarrassing for Kirstie Marshall being put in that position. No-one in this chamber, not even Mrs Dunne, can say whether it was a stunt or not. You can speculate—and I am sure you do a lot of that—but only the mother and her child know what the need was at that time. My understanding from the research I have done is that Ms Marshall was put into a very awkward position. She had to feed the baby when she fed it. Those who judge her are out of order.

Mr Smyth: That is your view.

MRS CROSS: That is the information from the research I have done.

This is such a simple matter. I take the point that amendments to the standing orders would generally go to the Administration and Procedure Committee. I agree with that. This, however, is not an issue that needs to be researched. This is a very straightforward issue. The Discrimination Act in the ACT prohibits people from discriminating against a woman breastfeeding anywhere in the community. That is part of the law. Why should we in this chamber be beyond that law?

Mr Speaker, I have the utmost respect for you. I think that you conduct your role admirably. This is not a question about you and your judgment. This is simply a matter of bringing us into line with the community and the laws in the community. That is all this is about. This is no reflection on you.

This is a simple matter. It should not have to be debated. For members of this place to put themselves forward as being concerned about social equity and social issues and raise concerns about this is deplorable. I thank members for their support for my motion. I commend the motion to the Assembly.

Motion, as amended, agreed to.

Legal Affairs—Standing Committee
Scrutiny Report No 27

MR STEFANIAK (12.02): I seek leave to move a motion authorising the publication of Scrutiny Report No 27 of the Standing Committee on Legal Affairs.

Leave granted.

MR STEFANIAK: I move:

> That Scrutiny Report No 27 of the Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) be authorised for publication.

Question resolved in the affirmative.

Health—Standing Committee
Statement

MS TUCKER: Pursuant to standing order 246A, the Standing Committee on Health resolved on 7 March 2003 that I make a statement concerning a briefing the committee received from the Winnunga Nimmityjah Aboriginal health centre. I seek leave to table the statement.

Leave granted.

MS TUCKER: I table the following paper:

> Health – Standing Committee – Winnunga Nimmityjah Aboriginal Health Centre – Statement by Chair.

On 21 February 2003 the Standing Committee on Health received a briefing from Winnunga Nimmityjah Aboriginal Health Service. The committee was concerned about the information received from Winnunga and resolved to make this statement to inform the Assembly about the briefing.

Winnunga is in dire need of increased support in order to adequately run the service. This is not a new issue. It has been raised repeatedly by Winnunga and, in the previous Assembly, was raised by the Standing Committee on Health and Community Care in its report on Aboriginal health in the ACT, the recommendations of which this government has largely agreed with.

Despite all the public statements and commitments, Winnunga is still inadequately accommodated and therefore cannot effectively service the community. They need action. The committee understands that because Winnunga derives the majority of its funding from the Commonwealth the ACT government does not have responsibility for those aspects of its functions. However, the ACT government can take responsibility for ensuring there is adequate support for Winnunga, regardless of what the Commonwealth government does.

Additionally, Winnunga estimates that 10 per cent of its client base are non-Aboriginal people who are marginalised, so therefore feel safer accessing the non-judgmental services at Winnunga. These clients are covered through existing resources, but the ACT government has a responsibility to resource the service for their care.

Aboriginal life expectancy still tends to be 20 years less than that of other Australians. This was once due to high infant mortality, but it is now due to high rates of adult mortality. The reason why Aboriginal people are sick are numerous, and they are linked to processes that have been repeated through the history of white domination of Aboriginal peoples. The reasons include fragmented families, contributing to grief, stress and powerlessness; marginalisation; low levels of education, which contribute to marginalisation; poor access to services, including preventative health care; poor access to appropriate and consistent housing; and social exclusion.

Aboriginal people can also be trapped in a grief/anger/despair cycle that is perpetuated from the histories of massacres, infectious diseases, dispossession, forced settlement and having their children taken away. Just providing basic medical care is not going to break this cycle.

Health care for all people, but particularly Aboriginal people, needs to be approached in a holistic fashion. The World Health Organisation recognises this by defining health as a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.

Winnunga Nimmityjah also recognises this and treats not only the patient and the disease but the whole family and also addresses housing, education, transport and income through support in dealings with Centrelink, support in the criminal justice system and health care beyond the mainstream model in spiritual and emotional healing.

It is particularly important to address the social determinants of health. It is agreed that the following are critical determinants of health: education, particularly of women; autonomy of women; effects of early life impacting on health in adulthood; employment or economic activity; access to food; physical environment (housing, water, waste); access to health services; social networks/social exclusion; addictions; chronic stress; and social gradient (where one sits in the social hierarchy).

Winnunga already goes a long way to meeting these needs, but needs additional support. Existing staff have extraordinary commitment to the service. However, as Winnunga has over 5,100 clients who are mostly marginalised and have complex needs, the government needs to recognise the service given by Winnunga and fund it adequately.

An example was given to the committee of Winnunga clients being unable to enter Centrelink so Winnunga staff would drive to the Centrelink office with the client and go into the office so a Centrelink staff member could come out and attend to the client. Surely all the services will operate more efficiently if mainstream services can go to Winnunga on a regular basis.

Winnunga also reports clients trying to access mainstream services and these services automatically referring them on to Winnunga because they are Aboriginal. One client called a telephone counselling service and was referred to Winnunga, but this posed some difficulty, given that the client was sitting in the Winnunga offices making the call and in need of immediate counselling.

Winnunga cannot be all things to all people. They need to be able to work collaboratively with mainstream services, which need to stop automatically referring people on to Winnunga. Other services such as housing services also need to recognise how imperative their role is in the health of Aboriginal people.

An additional need stressed to the committee is the need for Aboriginal people to have spiritual healing included in their treatment regime. Health services need to start looking at holistic treatment and seek Winnunga's advice when treating Aboriginal people.

In addition to better collaboration with service providers, Winnunga needs more staff and told the committee that the government made an election promise of $140,000 towards dual diagnosis staff. However, Winnunga also needs policy support staff. At the moment the CEO—one person—fulfils this role. She needs to be across all issues affecting Aboriginal people and in a myriad of places at once.

For example, the yet to be signed national strategic framework for Aboriginal and Torres Strait Islander health is intended to overcome the cost shifting and buck-passing that occur between the Commonwealth and the states and territories. It has been a lengthy process to get this framework signed, in part because Winnunga does not have the resources to participate equally in these discussions.

The framework agreement has reportedly worked well in other jurisdictions where senior people from each of the stakeholder groups are able to work together. It does not work by involving junior people who have no ability to make decisions as the only representatives of an organisation.

Members would be aware of the accommodation situation faced by Winnunga. As stated, the service has over 5,100 clients serviced by 41 staff in what is essentially a suburban house. This means that doctors and patients have no privacy for their consultations. The additional rooms in O'Connor being used on a monthly basis for a diabetes clinic are up a set of steep stairs, so therefore any clients that, because of their medical condition are unable to make it up the stairs, are seen outside.

This situation is intolerable. I cannot see one mainstream health service or the patients of mainstream health service tolerating this treatment. The committee sees no reason why our indigenous community should either.

Winnunga needs a purpose built facility, but has been offered accommodation in part of the Narrabundah health centre that the committee is told would adequately serve current needs. However, this offer was made in July 2002 and as yet, other than a letter stating that the issue is progressing, there has been no real progress on finding and allocating more appropriate accommodation.

The committee is taking it upon itself to keep a watching brief on this issue and will be seeking regular briefs from Aboriginal health services, following the government's actions through annual reports and seeking other briefings where needed. The committee will also keep members informed of its work in this area.

Martin Luther King Jr once said:

> If you start treating equally all those who have been treated unequally, you capture them forever in their inequality.

By continuing to allow Winnunga to remain in the situation they are in—having to work through mainstream bureaucracy, without adequate support or particular recognition of the model of health care they provide—issues of inequality cannot be properly addressed.

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Detail stage

Clause 4.

Debate resumed from 11 March 2003.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (12.13): Amendment No 4 inserts an example at the end of the definition of domestic partnership. The example lists a number of indicators that may be relevant to determining whether two people are in a domestic partnership.

The example will assist the court and make it clear that the definition is intended to be interpreted broadly, having regard to a number of factors. The use of an example will aid interpretation but will place no restriction on the court in deciding whether particular circumstances fall within the definition.

As I noted previously, this is ensured by the operation of section 132 of the Legislation Act 2001, which provides that in an act an example is not exhaustive and may extend but does not limit the meaning of the act or provision to which it relates. I believe that this form of definition provides a better, more flexible approach to defining something that may have many forms of expression.

On Tuesday of this week there was some significant debate and discussion in the chamber on the definition of domestic partnership and what constituted a domestic partnership or domestic relationship. I will not go into those issues in detail again, other than to say that the government, in this bill, has provided a definition that is designed to be inclusive and to recognise the range of domestic relationships which are part and parcel of our community and which are constituted within our community across the spectrum.

We are making an amendment to explain some of the circumstances or facts that would be taken into account. It is not an exclusive list. The courts have dealt with such definitions in relation to de factos and people living together in a bona fide domestic relationship. It is the government's firm view that we should not trammel that body of experience by a specific and less flexible approach to the definition of something which we know can take many forms and essentially is at the heart of the legislation that the government has introduced.

MS DUNDAS (12.16): Mr Speaker, members will note that the Attorney-General's amendment No 4 and my amendment No 3 are quite similar. But there are some key differences that I would like to discuss.

The Attorney-General's amendment and my amendment would insert a list of indicators of a domestic partnership. The government is suggesting that we do it with an example, whereas I was proposing that we do it by putting it in the legislation. They are two strategies that would produce similar results in the interpretation of the definition. The original definition in the legislation lacked clarity and was based on uncertain legal precedents in other jurisdictions.

The need for the list approach has been vigorously pursued by Canberra's queer community due to the uncertainty that would be caused if it was not included. The ACT Democrats maintain that it is preferable to insert the definition directly into the legislation rather than to rely on the softer and less reliable approach of inserting an example. I believe that the direct approach will provide greater surety for those affected by the legislation and provide a greater direction to our judiciary about how the definition should be interpreted.

Some concern was raised about whether or not inserting it in legislation would mean that the list was all-defining. But my amendment quite clearly states that the list does not limit matters that may be taken into account in deciding whether or not two people are domestic partners. That statement is similar to the note at the bottom of the Attorney-General's amendment. These indicators are not exhaustive. The courts can still take other facts into account when necessary.

I contend that my approach of sticking it into the legislation is stronger than the government's approach and would ensure that the courts did not solely rely on previous definitions of de facto relationships.

There is another small difference between the Attorney-General's amendment and mine. The Attorney-General's list includes "the reputation, and public aspects, of the relationship" between the two people as an indicator, whereas I call for the "social recognition, and public aspects, of the relationship". It is a small difference, and a subtle one at that.

Whilst I am supportive of the need to have the list of indicators, I think it is important that the indicators be in the legislation and have the same standing as the rest of our laws, not just sit there as an example. If the Attorney-General's amendment fails, I hope that people will support the need to have the list in the legislation. However, if the Attorney-General's amendment passes today, I will not be disappointed. The key point is that we should have the list in our legislation so that we do not confine the definition of domestic partnership. We should recognise the factors that influence legal definitions of domestic partnership. I prefer having the indicators in the legislation. If the Chief Minister's amendment is not successful, I will be moving mine. But I am supportive of a list of indicators being in the legislation.

MR STEFANIAK (12.20): I put a query to the Clerk in relation to Ms Dundas's amendment No 2, which would seem to be quite important to amendment No 3. They

would flow together. They both refer to page 3, line 12, as does Mr Stanhope's amendment.

Virtually all of the amendments from here on are very similar. We have some sympathy for the way the government has done its amendment, and we will be supporting it. We think it is a preferable way of doing it. The Attorney has espoused why that is so. We would have problems with Ms Dundas's amendment.

The courts are very experienced in these things. The list is very similar to what Ms Dundas proposes. I note that she is not going to be terribly concerned if the government amendment gets up. The example of indicators is quite sensible in seeing whether there is a bona fide domestic relationship or partnership between two people.

My colleague Mrs Burke will be moving and amendment to Mr Stanhope's amendment. Having indicated which amendments we will be supporting, I think it is appropriate that I let Mrs Burke move he amendment now so we can debate it concurrently.

MRS BURKE (12.22): Mr Speaker, I move amendment circulated in my name *[see schedule 1 at page 1083]*. I move this amendment for the purposes of consistency throughout the document.

MS TUCKER (12.23): I will speak to Mr Stanhope's amendment while he is considering Mrs Burke's amendment.

I am supportive of having a list. I think that is very important to help guide interpretation of this act. The factors in the list make sense to me. There is obviously no disagreement between Ms Dundas and the government except on where the indicators are located. I understand the arguments from Ms Dundas. I am happy to support what she is doing, but I am also happy to support what the government is doing. As I understand it, the government's amendment will be successful. I think that will be a good outcome.

Mrs Burke seeks to add "whether they are legally married". I did not hear her put an argument about why those words have to be inserted. I am sure members would give her leave to put one.

Mrs Burke: I just like consistency.

MS TUCKER: I do not understand what you mean by consistency. I think it is covered within the criteria that are listed. I do not understand the argument. You may need to elaborate.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (12.25): Mr Speaker, the government will not be supporting Mrs Burke's amendment. The advice I have from my department, which I accept, is that the amendment does not add anything and potentially will confuse the legislation. I understand what Mrs Burke is seeking to achieve. She wishes to add a further category—"whether they are legally married"—to a definition.

A married person that is a spouse is already specifically included within the definition of domestic partner with a specific reference to spouse. The definition says:

> 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, and includes a spouse.

A spouse includes someone who is legally married. The government's view is that that is perfectly clear. You cannot get it clearer than that. The definition specifically refers to a spouse.

Concern has been expressed to me because the definition of domestic partnership will come into play only when dealing with couples who are not married. A court, therefore, presented with a married couple would look no further than the definition of domestic partner, because it explicitly states that it includes a spouse.

A court looking to see whether or not a particular provision applies to a specified couple looks to the definition of domestic partner, sees that it includes a spouse, knows that a spouse includes somebody legally married—in the words you have used, Mrs Burke—and that is it. The court does not go any further. It does not look to add to that definition.

The department has provided me with an example of the potential confusion which the amendment might cause. It is a little complex. If A and B are a longstanding couple, but B is still legally married to C, Mrs Burke's amendment may be interpreted as meaning that A and B cannot be found to be in a domestic partnership while B is still married to C, notwithstanding that B and C perhaps have not seen each other for, say, 10 years.

The amendment ignores the reality of so many domestic partnerships that are part and parcel of our society. There are a lot of married people who remain married but leave their partners and form other bona fide domestic relationships. Our community is full of people who have left their husbands and wives but have not divorced, so they remain married. That is such a common domestic relationship within our society.

Your addition, Mrs Burke, might render that second relationship not a domestic relationship because one of the partners in that relationship is married to somebody else whom they never divorced but whom they left a lifetime ago.

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

Sitting suspended from 12.30 to 2.30 pm.

Questions without notice

Land rates—new system

MR SMYTH: Mr Speaker, my question is to the Treasurer, Mr Quinlan. Treasurer, your budget shows that revenue raised from general rates will be $117.7 million in the year 2004-05 and that it will rise to $121.5 million in the year 2005-06. You are planning to introduce an untried rating system for the 2004-05 budget year. Many people in the community think that this new system will dramatically raise the ACT government's income from rates.

Have you revised the estimates of rates revenue for 2004-05 and 2005-06, resulting from the introduction of this new system? Does it show that the ACT government's revenue from rates will increase dramatically as a result of the changes? Will you inform the Assembly of those figures?

MR QUINLAN: No. I have not revised the figures and no decisions have been taken at this stage—nor will be taken, I guess, until the system is implemented—as to what the formula might be. I imagine that is a year-to-year proposition. As budgets are produced each year, the forward estimates will reflect the decisions of the time.

I am interested to hear that many people think it is going to raise rates dramatically. I think the only way many people would come to that conclusion is if that erroneous information were pedalled loud and hard by a few people who have a vested interest in not seeing the rates system change.

As a sheer coincidence, there are quite a few people coming the other way and contacting my office to congratulate us on bringing in what they see as a sensible system—one that protects people from skyrocketing land values, as different areas of Canberra become desirable and therefore targets for rapid redevelopment and escalation in housing values.

MR SMYTH: Mr Speaker, I have a supplementary question. Treasurer, why are you then proceeding with the introduction of an untried rates system, when you have not modelled its impact and do not know what it will do to the revenue of the ACT?

MR QUINLAN: I did not say we had not modelled the impact. How many times has this question been asked? What I have been trying to say is that each year the rates formula has been adjusted, or tinkered with, to achieve a result. There is no reason in the world why the process of changing the formula to achieve a given result in the future—just for those houses which have changed hands; granted—would not continue.

If we wanted to model it, the number of variations of the model we could produce would be infinite. There is an almost infinite number of permutations which could occur in the future, just as there is an infinite number of different results which could occur in the future, if you continued with the formula system as the Liberal government used to.

MR SMYTH: But we are talking about your system. You just do not know, do you?

MR QUINLAN: No, you are not!

ACT Housing—rural properties

MS MacDONALD: My question is to the minister for housing. I have received many calls in my office in relation to the rural properties owned by ACT Housing that were destroyed in the bushfires. These ACT Housing tenants have not been informed whether their properties are going to be replaced. Minister, can you clarify the situation for these tenants whose properties were destroyed?

Mrs Dunne: I take a point of order, Mr Speaker. Does this question ask for an announcement of government policy?

MR SPEAKER: No. The government administers housing. Some houses have been burnt down. It is reasonable to ask a question about what the future holds.

MR WOOD: I can advise the house what is happening, as I have advised the tenants by letter which I expect they received yesterday. I make it public now. ACT Housing is to buy or build more than 50 houses across urban Canberra to replace rural properties destroyed in the January bushfires. Earlier this week I wrote to all tenants and former tenants who lost their homes and informed them of this decision. You will understand that it is important that they know before they hear it on the radio or somewhere else. I know that the decision will be a disappointment of many of them.

The acquisition of 50 additional properties is aimed at easing the housing crisis that already existed before 18 January and was magnified by the loses in the fires. Replacing public housing properties as quickly as possible is a major step on the road to recovery from the bushfire tragedy.

ACT Housing's process to clean up and rebuild properties in urban areas is already under way. At lunchtime I attended the demolition of damaged housing properties in Tanjil Loop at Duffy, where 11 houses were destroyed.

There remain a number of important inquiries that will affect a final decision about whether to rebuild in rural areas, including one by the ACT coroner. These inquiries, we understand, will take quite some time to complete. It would not be responsible for the government to make a decision on rebuilding in rural areas until the outcome of those inquiries is known. There are other factors too.

We are not going to allow the housing situation to worsen while those inquiries are under way, so the government has decided to act immediately and provide the funds to acquire replacement homes in urban areas. The acquisitions will be significantly funded by the insurance payout for the rural properties that is currently being negotiated with the insurers.

If the decision is eventually made to rebuild in rural areas, ACT Housing will do so through its annual stock replacement program. In the meantime, rural tenants must be provided with satisfactory long-term accommodation. They will retain the right to return to the rural areas if homes there are rebuilt. I feel for our rural tenants. I know what their homes and location meant to them. Some of them still have not accepted alternative accommodation through ACT Housing. I would urge them to do so as soon as possible.

As a result of today's announcement, the insurance money for rural properties will not sit idly in the bank but will be used immediately to provide homes for Canberrans affected by the fires.

MS MacDONALD: Minister, why was this decision made? Why is the insurance not being used to replace the rural properties immediately?

MR WOOD: In part, I have mentioned that. There are inquiries under way about whether houses and forests should sit close to each other. Let me tell you some of the background. Of the properties destroyed, 54 were in rural areas under the Territory and National Capital Plans. The properties were at Uriarra; Pierces Creek; Stromlo settlement; Cotter/Casuarina; Kirkpatrick Street, Weston; and Mount Stromlo.

Under those two plans, as everybody understands, residential uses are not permitted. This means that while ACT Housing can retain possession of existing houses indefinitely there is no mechanism to allow them to obtain leases or to sell properties which are no longer suitable for our needs, unless the relevant planning instruments are first changed. Some of us know that it has not been possible to achieve that. The government has been determining whether or not it is appropriate to rebuild these dwellings or seek to replace them elsewhere, as I have explained.

That is the background. I will give a little more detail, because I think this is an issue of importance to the residents and to the community broadly. Each of those settlements had its own characteristics that made it attractive to the people who lived there. The Uriarra and Pierces Creek settlements were both created for forestry workers, as was the Stromlo Forest settlement. However, while the first two were on territory land and plantation forestry under the territory plan, the settlement at Stromlo Forest was on national land which appears as an urban area under the National Capital Plan but as plantation forestry under the Territory Plan.

The cottages at Cotter/Casuarina, under the Territory Plan, were in the river corridor area, where neither development nor residential use is encouraged. The settlements in all those places, excluding Stromlo, were in isolated areas and distant from shops and other services.

The problem is a one that has not been capable of resolution rapidly, nor should it be, so we have taken the action I have indicated to members.

Land rates—new system

MR PRATT: My question is to Mr Quinlan. You are introducing a complicated and untried rates system, which will lead to a situation where everyone on the same street will be paying different rates for their properties. This will mean that the Revenue Office will require more staff and incur more administrative expenses to try to make the complicated system work.

Have you costed the extra staffing and administrative expenses that the Revenue Office will incur as a result of the introduction of your untested changes? If so, how much extra will your new system cost to run?

MR QUINLAN: To give Mr Pratt the benefit of my many years of experience in ACTEW, where we sent out a lot of bills for electricity to various different customers: there were some bills with rebates on them, and some without; there were different classifications of customers in terms of the level of voltage—whether they were high voltage or low voltage—and whether they were domestic or commercial.

Let me assure you that, once the system is changed—given that we have now got these modern things called "computers", which can do a lot of stuff repetitively and you only have to tell them once how to do it—this will not represent a huge workload in the actual application.

MR PRATT: Why are you introducing this new system, given that you have not really modelled it? Do you really know what those extra costs are going to be?

MR QUINLAN: Yes, I do. I have given you my assurances that I understand it. I have discussed it with Treasury. Yes, the system will take some effort to put together. In fact, we will be introducing the system this year with a view to it being applied next year, so that we have a full year for the Assembly to digest it and for the public to know about it.

But in terms of ongoing operation, no, I do not know. The input and the information in the rating system now is sufficient to do what needs to be done. Where you have made your mistake is that something that is slightly different from what we have got know to you is complex. It is not a complex system; it is a very simple system. Have a look at it and think about it. You will get your head around—you will, if you try.

Model litigant guidelines

MRS CROSS: My question is to the Attorney-General. Minister, in response to question on notice No 153 on 7 May last year from Ms Dundas, you said:

> I have instructed the Department of Justice and Community Safety to prepare draft model litigant guidelines which will apply to the conduct of legal proceedings on behalf of the territory and its agencies. Those guidelines will be similar, although not identical, to the model litigant rules adopted by the Commonwealth.

Minister, at what stage of development are these guidelines, and has there been any public consultation in their development?

MR STANHOPE: Thank you, Mrs Cross, for the question. I am able to advise you that at the moment there are no formal model litigant rules or guidelines for the conduct of an ACT government legal proceeding. However, the ACT Government Solicitor and its staff are well aware of the principle of the government acting as model litigant. As you indicated, I have instructed the Department of Justice and Community Safety to prepare draft model litigant guidelines which will apply to the conduct of legal proceedings on behalf of the territory and its agencies, and those guidelines will be similar, although I am advised at this stage not identical, to the model litigant rules adopted by the Commonwealth.

I have been advised that the Department of Justice and Community Safety will shortly circulate draft guidelines to other agencies for comment and, following those comments being received, the department will seek the government's approval as to the content and implementation of the guidelines. Some agencies, I am told, already have guidelines in place—for instance, the Director of Public Prosecutions has guidelines by which prosecutions are assessed and tried in court. Those guidelines are contained in the DPP annual report.

I have to confess to you, Mrs Cross, that it is not an issue that I have taken a recent briefing on. That is the sum total of my information at this stage.

MR SPEAKER: Order! Mr Stanhope, people are having difficulty hearing. I think you will have to speak into the microphone.

MR STANHOPE: Thank you, Mr Speaker, and I beg everybody's pardon. I was just saying that I regret that model litigant guidelines are not an issue that I have taken a recent briefing on. That is a summary from my notes of the current position reached. I will brief myself, Mrs Cross, and I will be more than happy to brief you, on exactly what the time lines are and where the department is up to in relation to the model litigant guidelines.

This is something I do take seriously. I have from time to time, particularly since having been a member of the Assembly over the last five year—I cannot think of an example at this stage—considered this matter. The issue and the concern that the government must in all of its dealings through legal processes be a model litigant in all respects have certainly attracted my attention. So the development, completion and dissemination of these guidelines is something that I believe is very important.

MRS CROSS: Mr Speaker, I ask a supplementary question. Minister, I thank you for taking the question on notice. To add to the matters on which you will be getting back to me: could you perhaps let me know whether you have set a deadline for the completion of those rules and, if so, what is that deadline? Also, when that is completed, will the rules be in the form of a statute or some other regulation, and will they be mandatory?

MR STANHOPE: I will take those questions on notice. As I say, I am not quite up to date on it. I would not imagine, though, Mrs Cross, that we would be pursuing the guidelines in the form of a statute. But I will take the question on notice and get a fuller answer for you.

Totalcare

MRS BURKE: My question is to the Minister for Industrial Relations, Ms Gallagher. It is about Totalcare workers who are facing the sack. On the Uhlmann/Kilby breakfast program yesterday morning on ABC Radio, Dave Campbell of the CFMEU stated that Totalcare workers were angry about "being stuffed around and pushed from one minister to the other". That is because the government will not come clean.

Minister, you stated at a CFMEU meeting yesterday, as reported on WIN News last night, that Totalcare workers had faced "a lot of uncertainty and that's not fair". I agree. What are you doing to end the uncertainty felt by Totalcare workers facing the sack and what are you going to do to ensure that they will be treated fairly?

MS GALLAGHER: I must say that I find it a bit rich to have that thrown back at us. The uncertainty I was referring to is the uncertainty that has been there for some years now and we have been left to clean up. Yesterday, I said to those workers that they had rights and protections under the law and under their certified agreements that this government will respect and that we will be encouraging them to enter into dialogue. As

Industrial Relations Minister, I meet with the unions frequently and the broad labour movement through the Trades and Labour Council, but I also speak frequently with the CFMEU.

I said that my role was to ensure that I was accessible for those discussions with the union. I assure the workers there that, whilst decisions are being made about the future of the businesses, we will be very conscious of the need to ensure that the information provided is accurate, that it gets to them, that they are involved in dialogue and that at all times their entitlements under the law in relation to industrial relations are respected and maintained.

MRS BURKE: I have a supplementary question, Mr Speaker. Minister, you have answered most of my question, and I thank you for that, but did the workers at yesterday's CFMEU meeting advise you of their frustration at being stuffed around by the government? What will you do to ensure that their voices are heard in cabinet and caucus?

MS GALLAGHER: No, they did not raise that with me yesterday. I know that there are issues about the fact that Mr Quinlan has responsibility for Totalcare and I have responsibility for broader industrial relations. The approach I am going to take is that I am here to listen to their concerns. I meet with them regularly. Again, my interest in industrial relations will ensure that, certainly, the information I get from the CFMEU will be relayed to both my caucus and my cabinet colleagues.

Gungahlin Drive extension

MS TUCKER: My question is directed to the Minister for Planning, Mr Corbell. I note that the Chief Minister believes that "We have been too genuflective to so-called national capital interests", but it appears that the government is being exactly that in relation to its preferred western route for the Gungahlin Drive extension. Minister, I understand that community members have raised with you the fact that the Australian Institute of Sport is making preparations to move its residences.

Have you followed this up and, if it is true, given that a great deal of the NCA's objection to the western alignment of the Gungahlin Drive extension related to the mitigation measures the government had included to minimise the impact on the AIS residences, will you reconsider the design for the western alignment, put forward a new proposal for a cheaper, at-grade western alignment, and challenge the NCA's decision in court?

MR CORBELL: Save the Ridge has raised with me its claim that the AIS is proposing to relocate its residences to another part of the AIS campus. I have subsequently been advised that the AIS is in the process of revising the master plan for its campus, and that this may involve the relocation of the residences to another part of the campus. However, that master plan is not yet finalised, so there is still a level of speculation about the matter, Ms Tucker.

Nevertheless, the approach by the NCA and the AIS in relation to this matter has not been a cooperative one. While the government was putting together the proposals for the western alignment, officers of the ACT government sat down with the AIS and sought its

advice on its future master planning intentions. Representatives of the AIS refused to provide any master plan documents to officials of the ACT government, so we had to work in the absence of that information despite requesting it.

Ms Tucker also asks about the matter of challenging the NCA's decision in court. This is not a case of the government genuflecting to the NCA: it is a matter of law. We do not have the capacity to build the road on the western alignment unless the National Capital Plan is varied to permit the route on that alignment. The National Capital Authority has taken the decision that it will recommend to its minister that the western alignment not be supported, and that there not be an amendment to the National Capital Plan to that effect.

The government did seek legal advice on the potential for challenging the NCA's decision in court, primarily through the Administrative Decisions (Judicial Review) Act. The advice indicated that the process undertaken by the NCA did contain a number of flaws that were potential avenues for appeal. However, the advice also made clear that, even if such an appeal was successful, it would not result in the substantive decision being changed. It would simply mean that the NCA would have to go back and conduct their processes properly, if the court found that it had conducted them improperly. It would not change the substantive decision. It would not place any requirement on the NCA to choose the ACT government's preferred alignment.

The only thing it would do is create a delay, and it was for that reason that the government has chosen not to pursue a legal challenge.

MS TUCKER: Will the minister table in the Assembly the legal advice he received that led him to believe that he could not successfully challenge the decision in court, and also the government's critique of the shortcomings of the NCA report?

MR CORBELL: This is the same request, Ms Tucker, that Save the Ridge made of me at a meeting a couple of weeks ago. In relation to the legal advice, no, I will not. It is quite common for governments not to provide legal advice.

In relation to the critique, it was prepared just prior to the 18 January bushfire event. It was to be published in the paper around the time of the bushfires, however, because of the events of 18 January, that simply did not occur. I have made inquiries of my department to see if that critique can be made available to Save the Ridge. I will follow up that request and, if the critique is available, I will happily table it in the Assembly.

Totalcare

MR CORNWELL: My question is to the Treasurer, Mr Quinlan. Today's *Canberra Times* reports that there was a divisive motion at last Monday's caucus meeting authorising you to sell or close the roads division and facilities management division of Totalcare by 20 September 2003 and to undertake a scoping study of the fleet division, with a view to its sale by 30 September 2004.

You have advised the Canberra community that "No decisions have yet been made on the future of Totalcare." Your colleague the Minister for Industrial Relations said on Win

News last night that Totalcare workers “faced a lot of uncertainty and that’s not fair”. I agree, Ms Gallagher.

Mr Treasurer, why have you not been fair to Totalcare workers—in my view and in the Minister for Industrial Relations’ view—and advised them that caucus had already decided their fate on Monday, and will you be prepared to table the caucus motion in this Assembly? Why have you not been fair to the Totalcare workers and advised them that caucus had already decided their fate on Monday?

MR QUINLAN: At one stage, Mr Cornwell asked me why I had not been fair, in his opinion. Well, I do not want to be fair in Mr Cornwell’s opinion, let me tell you. If you had read the newspaper carefully, Mr Cornwell, you would have read that the examination of Totalcare’s future would be guided by recommendations from a Treasury review—and on it went.

I love my Treasury officials dearly, but I concede that occasionally they can be quite dry in their recommendations and quite black and white. However, there was a Treasury review, with some recommendations, which also contained a significant amount of information regarding the performance of various divisions of Totalcare, which is essential to the deliberations. There are some recommendations there about what events should take place and what timing. However, the reason why we put the working party together is to allow all the affected stakeholders to come together and work through that information and those recommendations, towards coming up with those of their own.

Why haven’t I been fair? Mr Cornwell, I won’t actually be tabling the caucus decision in this place. But at the same time, I will introduce you to Quinlan’s theory of information osmosis. It goes: nobody leaks the information, but it still gets out. I prefer to believe in the theory of information osmosis because the alternative is too disturbing to contemplate. But just in case the osmosis happened to be rather rapid, I am not so silly as not to have provided significant detail to the union involved immediately afterwards.

Members of the Assembly will not have missed the irony of this feigned concern for the workers—I was going to say from the “arch conservative” of the Assembly but, looking at the composition of the opposition these days, we probably have the most conservative of oppositions, and you are not on your own anymore, Mr Cornwell. The number of hard-right conservatives over there is quite staggering. As I said, the irony of this concern for the workers I find quite staggering.

Mr Speaker, the government has been, and will be, entirely fair. As far as I am concerned, the feigned concern for the workers coming from that side of the house latterly is not far short of humorous. I think everybody in the place is aware that the job that we have embarked on with Totalcare is going to be a very difficult job. You have already heard Ms Gallagher explain some of the difficulties. It is going to require delicate industrial negotiations, and I am sure the opposition would love to derail those. Far from being concerned for the workers, I am sure they would love to derail them.

I am sorry, Mr Cornwell: we have been fair and we will continue to be fair with the workers of Totalcare. At the same time, we will continue to pursue the objective of being fair to the ACT taxpayer in terms of the service and the effective and efficient delivery of that service.

MR CORNWELL: Treasurer, can you advise when you are going to tell the Totalcare workers of their fate, and will you table the Treasury review in this Assembly? I do not want your caucus motion, because I do not very much like things with blood on them. But please table the Treasury review.

MR QUINLAN: The short answer to that is no. The Treasury report, as I explained in the answer to the original question, contains, in large part, information as to the contractual arrangements with Totalcare and the economic performance of Totalcare. Again, according to the theory of information osmosis, we would not want that information out there in the commercial world. The world at large now knows that Totalcare is to change, and you can bet your boots that various entrepreneurial spirits out there are already making plans to optimise their position in relation to that change. We do not really need to supply those people with commercial-in-confidence information, which they would not provide to us in return.

Mrs Cross: Mr Speaker, I have a point of order. Mr Cornwell's reference to "blood on your hands" could be considered an imputation.

Rural lessees—assistance

MR HARGREAVES: Mr Speaker, my question, through you, is to the Chief Minister. Farmers in the ACT are experiencing the same drought-related problems as farmers elsewhere in Australia—problems exacerbated, in many cases, by the bushfires that swept the territory in January. Can the Chief Minister tell the Assembly what assistance the government is offering rural lessees affected by both drought and fire?

MR STANHOPE: This is a very important matter. As members are aware, the ACT was declared to be in drought on 20 November, 2002. While the declaration did not imply any direct assistance to rural lessees, the government recognises that the drought has worsened since that time and that, in January, a substantial amount of pasture and other assets were lost to the fire.

Sixty-one rural lessees suffered fire damage in January, and about 63 per cent of the rural land of the territory was burnt. It is estimated that between 3,000 and 4,000 sheep, 150 cattle and 35 horses were lost in the bushfires. As a result of the drought, the government offered to bring forward the kangaroo culling season, to help farmers suffering serious loss of stockfeed, and many took advantage of this offer.

The government acted promptly after the bushfires to offer further assistance. Rural lessees, for instance, were offered similar assistance to that which is available in New South Wales for cartage of fodder, stock and domestic water. Environment ACT set up a rural recovery team, headed by the rural senior project officer. The team is in close liaison with rural lessees, recording the extent of fire damage, providing advice on land management issues and acting as a one-stop shop for rural matters.

Through the bushfire business assistance package, the government is offering assistance to rural lessees whose business assets were significantly damaged in the fires, providing grants of up to $3,000 and interest subsidies on loans to eligible businesses. Environment ACT, in cooperation with Land and Property, identified some suitable land for grazing,

to provide both drought relief and some fire fuel reduction. For example, members will be aware that land at Red Hill and Gungahlin has been identified for this purpose. Announcements have also been made by my colleagues about land rent and rates relief.

Considerable damage was caused to fencing in the January fires, a large proportion of which is government owned. The cost of replacing or repairing this fencing is estimated to be as high as $500,000, although it is anticipated that insurance will ultimately cover the cost. Despite the fact that the insurance issues have not yet been resolved, work on replacing affected fencing is underway, with the first priority being to secure roadsides.

Mr Speaker, these are examples of assistance the government has already offered to rural lessees suffering drought and bushfire-related losses. However, in recognition of the extent of serious damage inflicted on rural businesses by the January fires, the government decided earlier this week—and indeed in cabinet on Monday—to extend the range of assistance. The government has now decided that, as a result of the proliferation of weeds, there is a significant threat to landscape recovery in the 155,000 hectares of rural land recently burnt out. The government has decided o provide an immediate $80,000 to commence a priority autumn weed control program, targeting weeds such as Paterson's Curse and nodding thistle, which are expected to flourish in the absence of competition in burnt and drought- affected areas.

As a result of extreme heat in some areas affected by the fires, ground cover, root systems and organic matter in the soil has been totally removed. This has effectively made the ground sterile. Without some restoration work, soils will be easily lost to erosion. Environment ACT will work with rural lessees to determine the best means of stabilising the soils. In addition to that, we have made arrangements for the purchase of up to $30,000 worth of seed, to reseed areas which have been totally denuded.

In addition, large areas of tree plantings on rural leases—in particular wind breaks planted by rural lessees—have been badly burnt. Many will die, and significant replanting is necessary. The government will allocate an immediate $10,000 for the purchase of seedlings, to allow for the restoration of rural plantings of trees and bands of trees. It is anticipated, Mr Speaker, that these seedlings will be available in spring and will be planted with the assistance of community groups.

In cooperation with Greening Australia, the government has also decided to support a rural recovery project to address problems of erosion control, water quality, land management and protection and re-establishment of vegetation. Greening Australia has submitted a significant proposal to the government. It proposes that funding be sought from a number of sources, including the Commonwealth.

In order to enable this particular project with Greening Australia to proceed, the government has decided to allocate $50,000 this financial year for start-up work on major environmental erosion control, water quality, land management and a protection regime for the affected areas. Other priorities the government will look at in its support for rural lessees are in dam cleaning and the appointment of additional resources to the department.

Just as the government moved swiftly to provide assistance to those suburban residents who lost houses, and to business people who suffered losses in the January fires, it has

not neglected the significant needs of rural lessees suffering not only the effects of the fires, but also the effects of the drought.

This latest raft of significant support by the government specifically for rural lessees will address not just issues being faced directly by the rural lessees as they conduct their businesses. Of course, they have very serious implications for the environmental integrity of the large areas of the ACT which were burnt by the fires, and represent a major commitment by the government to ensuring that, to the greatest extent possible, the environment of the ACT is protected.

Lake Ginninderra—coffee facilities

MRS DUNNE: Chief Minister, in your Canberra Day oration yesterday, you were quoted as saying, "Why can't I have a cappuccino by the shores of our lake?" You were attributing this barrier to the full enjoyment of our city to, amongst other things, the National Capital Authority. It seems, Chief Minister, that you do not get out enough because a quick discussion round the place this morning showed that the new Commonwealth Place lakefront has a coffee bar and restaurant, the bicycle hire and boat hire places on the lake both have coffee outlets, and the balcony of the National Library has a coffee shop that overlooks the lake. You can buy coffee at the Southern Cross Club and at Regatta Point and the splendid Tuggeranong Arts Centre on Lake Tuggeranong has a good restaurant from which you can buy coffee. That really means that the only place you cannot buy a coffee by the lake is by our lake, Lake Ginninderra. Minister, is it a fact that the NCA does not have any controls over Lake Ginninderra? If that is the case, what is stopping your government from approving such uses on Lake Ginninderra?

Ms Gallagher: The big issues!

MR STANHOPE: It is an interesting issue. It is an issue that I do take an interest in and have taken an interest in for many years in the ACT. My speech yesterday covered a range of other significant issues, as well as cappuccino by the lake. The speech covered issues around indigenous disadvantage and the vision that indigenous people have of the ACT and the future of this place. The speech covered in some detail our rush to war in Iraq and the idiocy of that policy. My speech covered issues around the Canberra Plan, the spatial plan, the social plan, and this government's determination to address disadvantage within this community. It covered all of those issues. I am very pleased that Ms Tucker read excerpts of the oration with such close attention. It did also touch on the extent to which, in my humble opinion as a long-time resident of this city, we, the people of Canberra, have been genuflective, that we have not asserted—

Ms Dunne: I take a point of order, Mr Speaker, under standing order 118. The question was about coffee on Lake Ginninderra. I have just timed the Chief Minister at 2½ minutes and he has yet to mention coffee on Lake Ginninderra.

MR SPEAKER: Mrs Dunne, you might have made a strategic mistake in mentioning the speech. I do not think you have a point of order.

Ms Dunne: Speaking to the point of order, Mr Speaker: Ms Tucker mentioned the speech as well.

MR STANHOPE: It is a speech which many have mentioned and a speech which, I hope, many of you will listen to. You will have twin opportunities—tomorrow on ArtsSound FM and on 666, our favourite radio station, at one o'clock on Monday. Double up; listen to it twice. Record it. Enter it into your bedside alarms and awaken to it of a morning. Put it on your telephone answering machines for the people you put on hold.

It is a wonderful speech which raises some ideas and some issues for discussion, one being around the role of Canberra as the home of the 322,000 people who currently live here, a serious and significant issue. It is an issue that Ms Tucker raised of Mr Corbell. There is an issue here for us, the people of Canberra, the people who call this place home, the people who have come here, who were born here, who live here, who will stay here and who give their body and soul for this community. It is an issue that is worthy of serious discussion. It is an issue that does not deserve to be trivialised.

Ms Dunne: I rise to a point of order, Mr Speaker. I still have not heard any mention of Lake Ginninderra and coffee and another two minutes have gone by—4½ minutes of non-coffee and non-Ginninderra. Standing order 118A says that answers should be concise and to the point. The point is coffee by Lake Ginninderra and an answer of 4½ minutes is not concise.

MR SPEAKER: I am sure that the Chief Minister is not going to repeat the whole speech.

MR STANHOPE: Do not tempt me, Mr Speaker. I think that this is a serious issue and a matter for serious discussion. I do not wish to diminish that. I think that this is a serious issue. It is an issue around the heart and soul of Canberra and it really is derisory of Mrs Dunne to suggest that we are, as a community, connected with our lakes. We have not. There is a disconnection and a visit to any other major city in Australia or, indeed, in the world will put the lie to the extent to which communities in their planning and in their living successfully connect with water. We have not done it in the ACT. One of the things we have not achieved in our planning, in the way we have structured and constructed this city and in the way we interact with our environment, is a connection with the water, with the lakes. Go to any other city in Australia with a major lake, a bay, a harbour or a river.

Ms Dunne: Mr Speaker, I take a point of order under 118A. I have asked a question in relation to what is stopping this government from doing something about having these sorts of facilities on Lake Ginninderra. Another minute has gone by, the minister is 5½ minutes into this answer and he has not yet mentioned why his government has not done anything about Lake Ginninderra and these facilities.

MR SPEAKER: Come to the point, Chief Minister.

MR STANHOPE: I will. Actually, I will conclude my answer, Mr Speaker. I think that this is a serious subject. It is a subject that I would be very happy to seriously debate. I deliberately and quite consciously raised the matter yesterday in a speech which, irrespective of what you think of it, was a significant speech. I raised the matter advisedly to stimulate and excite some public discussion around our relationship as

residents of Canberra, as residents of this place, our home, with the planning decisions that are made for and about us and the relationships between our community, our homes and our natural and built environment. A part of that environment, of course, is the fact that we have developed three beautiful lakes which we do not utilise properly.

Ms Dunne: What are you doing about it?

MR STANHOPE: What I have done about it is that in a very structured, sensible and intelligent way I have raised the issue for discussion, community debate and interaction, and it is working. The *Canberra Times* reported the speech. The ABC is running the issue. It is an issue which the people of Canberra actually have views about.

I will conclude on this point, and it may be a point I make at my own cost, but it was an interesting point in the context of the audience that listened to the speech yesterday: the most significant audience response to the entire speech was on the issue of how we connect to our community, this very issue of the NCA and our relationship with the NCA. It was this one issue in a long speech—a half-hour—that excited audience response. It is a significant issue and I propose to continue with the issue irrespective of the asinine nonsense being expressed by Mrs Dunne and the Liberals.

MS DUNNE: I have a supplementary question, Mr Speaker. This is probably going to be a big ask. Will the government support the development of a community arts centre on Lake Ginninderra like the one on Lake Tuggeranong, thus providing a much-needed facility for you to interact with the lake, Chief Minister?

Mr Hargreaves: I rise to order, Mr Speaker. Mrs Dunne is asking for the Chief Minister to declare government policy.

MR STANHOPE: Thank you, Mr Hargreaves, but all is revealed; it was a trick question. The question was about the arts centre and had nothing to do with cappuccinoes.

Mr Quinlan: You will have to start again.

MR STANHOPE: That's right. It was really a subtle trick designed to unseat me.

Mr Hargreaves: It was a cunning plot.

MR STANHOPE: It was a cunning plot. The ACT government, through PALM, is working assiduously on a range of planning options for the Belconnen town centre, as I indicated in answer to a question asked of me at the speech I delivered yesterday about the status of the Belconnen town centre and the very noticeable planning mistakes and errors that are a feature of the Belconnen town centre.

I think that none of us would deny for a second that the planners who made those initial decisions around the Belconnen town centre—the placement of the Belconnen town centre and its relationship with the lake—foisted a travesty, not just on the people of Belconnen, but on Canberra as a whole. We have been landed with an arrangement at Belconnen that is exceedingly difficult to deal with and impossible to undo.

The options presented by my colleague Mr Corbell in relation to the bus interchange represent some of the incredible difficulties that we face in making Belconnen and the Belconnen town centre a functional centre. The issues around how we deal with the enormous obstacles we face at Belconnen in connecting the Belconnen town centre with its lake, Lake Ginninderra, are, of course, exceedingly difficult issues.

A start has been made. There are plans in place. There are significant representations being made in relation to the development of an arts centre for Lake Ginninderra and for Belconnen. It is this government's view, and it was the previous government's view in all of its discussions and consultations around the development of an arts centre for Belconnen, that it needs to be based on the expression of significant community infrastructure and support and the capacity to support arts and an arts centre. These are the issues that we continue to pursue with the Belconnen community.

Lake Ginninderra—section 187

MS DUNDAS: My question for the Minister for Planning goes to the heart of the topic the Chief Minister was just discussing. Minister, could you please inform the Assembly what plans your government has for section 187 on the Lake Ginninderra foreshore.

MR CORBELL: Section 187, I assume, is the site being proposed by some members of the community for a potential arts centre. I need to take the question on notice, and I will get back to Ms Dundas.

MS DUNDAS: Thank you, Minister, for taking the question on notice. Could you please inform the Assembly whether or not the government will undertake a feasibility study in relation to a Belconnen cultural centre, considering the community was unsuccessful in their bid for funding to undertake their own feasibility study?

MR CORBELL: The government's view to date has been that we would encourage those people who are lobbying for that facility to seek funding through a grants program administered by the Chief Minister's Department to do an assessment of needs.

Ms Dundas: And they were unsuccessful.

MR CORBELL: I was not aware that they were unsuccessful. This is the first I am aware of it. However, the issue the government has to address—and it is perhaps more an issue for my colleague Mr Wood, insofar as it relates to arts facilities—is an assessment of the infrastructure that is already in place in Belconnen, notably at the—

Mrs Dunne: Come to Belconnen and have a look.

MR CORBELL: I go to Belconnen all the time, Mrs Dunne. You have more than Weston Creek has. The Belconnen Community Centre already has a number of facilities you would expect to be in an arts centre—a theatre and other display places. But I am not an expert in this area. As to whether or not the government will undertake a future feasibility assessment, I will need to seek further advice and come back to the member.

Loss of noise credit allocation

MR STEFANIAK: My question is to the Minister for the Environment. Minister, is it true that the Fairbairn Park Control Council will lose several of the very limited noise credits allocated for local motor sport owing to the use, by the Rally of Canberra, of the hill climb track there between 25 and 27 April?

MR STANHOPE: I hope I can help you with this. Mr Stefaniak, I would be happy to take that question on notice.

I ask that all further questions be placed on the notice paper.

Totalcare

MR QUINLAN: Mr Speaker, on a point of clarification on a question I took earlier about Totalcare and the Treasury review: I would like to advise the Assembly that most of the recommendations in that review were actually originally authored by the board of Totalcare. A second reassurance that I give the Assembly is that, in respect of the leaking of the actual detail of the caucus decision, I have a firm assurance from the unions, who went out of their way to ring very early this morning to let us know that it did not come from them.

Paper

Mr Speaker presented the following paper:

> Study trip—Report by Ms Tucker, MLA—Australasian Study of Parliament Group National Conference on Parliamentary Privilege, Melbourne, 11 and 12 October 2002.

Capital works program 2002-03
Paper and statement by minister

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

> 2002-03 capital works program—progress report—December quarter.

I ask for leave to make a short statement.

Leave granted.

MR QUINLAN: This is the second progress report for the current financial year's program. The report provides detailed information on the progress of expenditure for all projects included in the 2002-03 capital works program, with particular focus on individual projects.

The December report incorporates quarterly and full-year expenditure information on all projects included in the current capital works program. It also identifies all variations to the 2002-03 program and presents all information at the project level, according to departmental responsibility.

Mr Speaker, the original budget for 2002-03 capital works was $141 million. With the inclusion of previous years' unspent funds and variations to date, the total amount of funds available for expenditure in 2002-03 is $147 million.

Departments incurred expenditure on capital works totalling $25 million during the December quarter, a total expenditure for the first half of the 2002-03 financial year of $36 million. This represents only 24 per cent of available funds.

The Department of Urban Services was the largest contributor to the capital works program in the second quarter, with expenditure of $17.3 million. Significant projects completed by 31 December 2002 are the Barton Highway duplication, duplication of Monaro Highway over Dairy Flat Road, and upgrade of the Periodic Detention Centre at Symonston.

Other major projects with significant expenditure in the second quarter include perioperative services stage 2 at the Canberra Hospital, Amaroo Preschool and Belconnen Health Centre.

There are a few projects which may not spend the majority of funds allocated to them this year. These include Belconnen pool—surprise, surprise—Woden Police Station, the Glassworks project, extra community space, and the new Griffin Centre. These projects are major works which are complex, particularly in relation to planning, design and consultation. Mr Speaker, I commend the 2002-03 capital works program second quarterly report to the Assembly.

Appropriation Bill 2002-2003 (No 2)
Paper and statement by minister

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism and Minister for Sport, Racing and Gaming): For the information of members, I present the following paper:

> Appropriation Bill 2002-2003 (No 2)—Revised financial statements.

I seek leave to make a short statement.

Leave granted.

MR QUINLAN: This document is associated with Appropriation Bill No 2, tabled on 20 February 2003, which provided for an increased appropriation of $17.295 million. When I tabled the second appropriation, I advised that amended departmental budgets for supplementary appropriations would be tabled during the March sitting period. These statements are required under section 13A of the Financial Management Act of 1996.

The revised financial statements outline, for those affected agencies, revised financial budgets, output statements and performance schedules in accordance with the bill. The report also presents the revised financial statements for the territory.

Paper

Mr Wood presented the following paper:

> Cultural Facilities Corporation Act, pursuant to subsection 29(3)—Cultural Facilities Corporation—Quarterly report for the second quarter of 2002-03: 1 October to 31 December 2002.

Progress towards new Australian health care agreements
Ministerial statement

MR CORBELL (Minister for Health and Minister for Planning) (3.34): I ask leave of the Assembly to make Ministerial statement concerning progress towards new Australian health care agreements.

Leave granted.

MR CORBELL: Mr Speaker, the Australian health care agreements—formerly known as the Medicare agreements—have been a cornerstone of Medicare for the past 20 years. The AHCAs are the main agreements between the Commonwealth and each state and territory for funding public hospitals and other health services.

Each AHCA runs for five years and the current round of agreements are due to expire on 30 June this year. The ACT receives about $91 million per annum under the current AHCA. The process of renegotiating the AHCAs has commenced, and there are a number of key challenges and opportunities that need to be addressed.

The focus of the current agreements is on public hospital services, but health services are changing and the agreements also need to change, to reflect the way health services are now provided. More and more care is now being provided to patients outside hospitals. Many types of care, such as dialysis and cancer treatments, which were once provided to people in hospital wards, are routinely provided on a same-day basis, and often in community-based settings or in people's own homes.

Technology has also improved dramatically, allowing, for example, procedures such as stenting for the treatment of blocked coronary arteries to become commonplace in replacing, or even delaying, open heart surgery.

Mr Speaker, our ability to keep people out of hospital through improved community-based services has also increased. Those services are providing benefits such as improved quality of life and independence for people in the community. Our problem, however, is that the arrangements under the current health care agreements do not recognise changing health needs and changed service delivery models.

The model underpinning the agreements needs to better accommodate these changing models of care, to provide for better integration of care between general practitioners, community health care and the hospital sector. We need to provide services that meet the needs of older Canberrans, and indeed all older Australians, in responses to the key reform issues based on health care both in Canberra and across the country, including Aboriginal and Torres Strait Islander health. We need to improve access to elective surgery, work force, mental health issues and quality.

To deliver this, we need an Australian Health Care Agreement to provide flexibility and adequate funding. The lack of adequate funding is significantly affecting the ability of states and territories to provide health services. The AHCAs have not been indexed at levels sufficient to cover the increase in costs incurred by our public hospital systems.

Under the current agreements, the Commonwealth, states and territories appointed an independent arbiter to determine the indexation levels for the funding provided under the agreements. However, when the Commonwealth did not like the answer, they simply refused to abide by the independent umpire's decision, and set their own lower indexation level. This has cost the states and territories, including the ACT, millions of dollars under the current arrangements.

In the ACT, Mr Speaker, overall, the current AHCAs provide less money in real terms than the previous agreements did. However, over the same five-year period, the ACT government's own health expenditure has increased in real terms by an average of 5 per cent per annum. The Commonwealth must provide real-term increases under the next agreement, to simply keep track with the continuing increases in health costs.

As a minimum starting point, the new AHCAs must make up the indexation shortfall, and the new agreements must have indexation arrangements that reflect the growth in costs for the hospital system. This covers not only inflation but increasing costs arising from factors like new technology and the continuing ageing of our population.

The Commonwealth Minister for Health and Ageing, Senator Patterson, in granting substantial premium increases for private health insurers, has acknowledged that costs in health are growing at a rate well above inflation. All we are asking, Mr Speaker, as a territory—and indeed as states and territories—is that she agrees to give the public health system the same increases in funding she is prepared to give to the private system.

In addition to inadequate indexation, there are areas where states and territories are having to make up for the shortfalls in services that are the Commonwealth's responsibility. The first is in aged care. Residential aged care is the responsibility of the Commonwealth, and the Commonwealth simply does not fund enough places.

I note that Senator Patterson has said in the press that the Commonwealth has provided 26 per cent more aged care places over the last decade. What she does not say is that the target population for aged care services—people over 70—has increased by 90 per cent.

According to the Commonwealth's own target-setting process, it should be funding over 17,000 more residential aged care places across the country than are currently available. The shortfall in places means the residential care system is underfunded by at least

$367 million per annum nationally. In the ACT, this would translate into an additional $3.9 million per annum—$3.9 million that we need for aged care in our community.

The effect of the shortage of aged care places is that older people are staying in hospital longer. This is not good care or quality of life for them, and it costs us more as a community. The number of older people staying in ACT hospitals for long periods, who would be more appropriately cared for elsewhere, increased by 72 per cent over the period 1998 to 2002.

To help address problems in aged care services, states and territories are asking the Commonwealth to ensure that its target for the number of places required for residential aged care is met. If the target is not met, then we are asking the Commonwealth to free-up the money to fund alternative care options such as transitional care, community-based care and home-based programs. States and territories, including the ACT, are also asking for flexibility in funding arrangements to develop new programs that span federal, state and territory responsibilities.

Mr Speaker, the other area of Commonwealth responsibility the states and territories believe needs to be addressed in the new AHCAs is general practice. The ACT is particularly hard hit in this area. We have the second lowest number of full-time equivalent GPs of any state or territory after the Northern Territory—and the numbers in the ACT are declining at a rate far higher than anywhere else in the nation.

We also have the lowest bulk-billing rate of any state or territory at 51.2 per cent, and this rate is falling rapidly. We are seeing the effect of this again in our hospitals and particularly in our emergency departments. We are seeing an increase in emergency department attendances for less urgent conditions as the number of GP services declines.

Since 1998-99, there has been a 15 per cent increase in the number of people with less urgent conditions attending emergency departments. At the same time, there has been a 9 per cent drop in the number of GP attendances. A survey of people with less urgent conditions waiting in our emergency departments, conducted by the ACT Division of General Practice early last year, found that 85 per cent would prefer to visit a GP for their condition, if one were available.

As part of the Australian Health Care Agreement negotiations, states and territories are asking that the Commonwealth improve access to general practice health care, through increasing the medical benefits schedule rebate for GP services. The ACT, along with all other states and territories, would also like to explore alternatives, such as grants to GPs in undersupplied areas to support their practices, and cashing out medical benefits schedule payments to provide better after-hours care.

If the Commonwealth does not take steps to alleviate the shortage of GPs, states and territories are asking that the Commonwealth give them—that is us—the ability to bulk-bill GP-type patients who present to emergency departments and charge the cost of their treatment back to the Commonwealth.

Members will be aware that the Commonwealth has invested heavily in raising private health insurance participation rates. The Commonwealth's investment in the private insurance 30 per cent tax rebate is now running at $2.3 billion annually. The claim from

the Commonwealth has been that the goal of their private health insurance policy is to relieve pressure on the public hospital system. This policy, however, has substantially failed in its objective. In fact, it has almost totally failed.

States and territories have experienced little, if any, reduction in hospital demand since the rebate was introduced. This is probably more related to the transfer of services from inside hospitals to outpatient or community-based settings, rather than anything to do with the private health insurance rebate.

Mr Speaker, the rebate is incredibly inefficient. Independent economic analysis has shown that, if the money that has gone into the rebate had been allocated to public hospitals instead, public hospitals could not only have treated everyone currently waiting for elective surgery, but a substantial proportion of people currently receiving care in private hospitals as well.

The Commonwealth has to do better with its use of public money. The next AHCAs provide an opportunity for this. A first step would be to allow public hospitals to charge the same rates from private health insurers as private hospitals can charge for private patients. At the moment, public hospitals can charge only a low rate for private patients. So, even if someone uses their private health insurance in a public hospital, the public system has to pay a large part of the cost.

Another problem is that private health insurance covers only a limited range of services. The Commonwealth regulates private health insurance and can use that power to require private health insurance providers to cover a broader range of services. This would make private health insurance more useful and increase its use.

Finally, the Commonwealth should properly address the problem of gap payments. The Commonwealth solutions to date have not been effective, and gap payments are still a major disincentive for people using their private health insurance cover.

Mr Speaker, beyond the areas we have talked about above, there is a range of other reform areas that the next Australian Health Care Agreements need to address. These include the health of Aboriginal and Torres Strait Islander people who still have, on the whole, much worse health outcomes than other Australians.

The next Australian Health care Agreements should include a strategy for improving access to elective surgery. The last agreement gave the ACT $16 million to reduce elective surgery waiting times. This money was provided as a one-off amount and has run out, putting renewed pressure on elective surgery waiting times. Rather than one-off payments, the Commonwealth should work with us to develop a comprehensive and ongoing strategy to improve access to elective surgery in our public hospitals.

We also need to do something about the growing work force shortages among groups such as doctors, nurses and pharmacists. We also need to continue the efforts to improve mental health services and service quality that have been progressed under the current agreement.

Members of the Assembly would all be aware that the Commonwealth Health Minister's response to the renegotiation of proposals put to her by state and territory Health

Ministers has been to refuse to meet and discuss the issues. This is a very disappointing response from the Commonwealth Health Minister, especially as, last year, she participated in a process to gather input from expert clinicians and other stakeholders for a reform process under the next Australian Health Care Agreement.

Mr Speaker, I call on all members of the Assembly to consider the Commonwealth's position and to ask them, wherever possible, to urge their contacts in the Commonwealth to engage in constructive discussions with states and territories on the next agreements. We need the Commonwealth to make a clear commitment to provide the reform network and resourcing required, to ensure that Australians continue to have a high quality public health system, and that Canberrans get access to that system as well. I present the following paper:

> Progress towards new Australian Health Care Agreements—Ministerial statement, 13 March, 2003.

I move:

> That the Assembly takes note of the paper.

MR SMYTH (Leader of the Opposition) (3.49): Mr Speaker, the Minister for Health says in his speech that the Commonwealth should work with us. That is appropriate—the Commonwealth must work with the states. However, the states must, in turn, work with the Commonwealth. The states must also work with the resources already under their control. You can take the approach that you blame the federal government for all the woes that you cannot solve, but this is a government which came to office with a number of promises that are yet to be implemented, or are yet to be honoured.

We have seen the part-time health minister—the Chief Minister, Mr Stanhope—move on. He has handed the chalice to Mr Corbell. Yet what we have not seen from the new minister is a single positive—not one idea from his party or his department—that might improve the health system. Let us look at what they have done.

Despite a large number of extra dollars being put into the health system, we are yet to see any benefit for it at all. We are seeing waiting lists expand and services reduced, and yet we have no ideas from this government. I refer to one of the ideas they put forward as their cure for the GP problem—and something they have not even bothered to try. They said they would build two after-hours GP clinics, and then explore the options of expanding them into Gungahlin and the southern suburbs of Tuggeranong. We are yet to see that happen.

What we saw happen in their budget for this year, though, was the number of outpatient services reduced from 210,350 to 202,000. How you can spend more money, reduce the services and get less output from a hospital is beyond me.

It was claimed, for much of last year, that they were improving the health system. Mr Corbell speaks about the Commonwealth's responsibility, for instance, to aged care, and yet this government's response has been, against the will of the community, against the wishes of those already involved in aged day care centres, to close the two respite aged day care centres at Narrabundah and Dickson and say, "Get on the bus and go to

Tuggeranong or Belconnen." How that is an improvement in the service—taking into regard the will of the community—is beyond me.

The minister talks, in his speech, about giving us some money for elective surgery waiting lists. Perhaps he should be like one of his predecessors as health minister—Mr Moore—and get out there and talk to the federal government, find common ground, negotiate with them and get what he can for the people of the ACT, instead of taking such an aggressive stance. What we have seen under this government—under the former part-time health Minister, Mr Stanhope—is Calvary Hospital being forced to close its public wards to elective surgery for 14 weeks in this financial year, adding something like 974 souls to the waiting lists. What is their answer to it? There is no answer.

Mr Speaker, because of the cuts to the Calvary funding, we have also seen the reduction of other services-such as the provision of services, through Calvary, to mental health patients. Mr Corbell talks about improving mental health, yet this is a government that has cut the funding that would allow mental health services to be delivered through Calvary Hospital.

I think Mr Corbell ought to put a clearer picture on the record of what his achievements are, and those of his predecessor in the short term of this government with regard to the health system of the ACT. The achievements are not rosy. I do not believe there is a single plus. Perhaps the single plus is that finally, after much delay, in this year's budget we have a step-down facility—a convalescent facility—which we had funded in the previous year's budget. Under Mr Stanhope, that was not built and has certainly led to bed block. At least we can see that one finally coming through.

More delays were seen on the nurse practitioner trial. The initial results for that were coming through as the election was being held. Quite clearly, the nurse practitioner trial was a success and could have gone ahead much earlier. However, under the government of delay, nothing happened.

I agree that the federal government has control of the funds and the federal government has a large amount to say in what we do with Health. We must be working with them, not against them, to try to get the best deal we can for the ACT. Previous Liberal Health Ministers Kate Carnell, Gary Humphries and Michael Moore did that, to get the best outcomes for the people of Canberra.

I think you have to ask what this government is doing with the existing dollars they have, except provide the people the people of Canberra with less services. They have nothing positive to offer and do not have any original ideas with which to address the health system.

Question put:

> That the debate be now adjourned.

The Assembly voted—

Ayes, 8		Noes, 9	
Mrs Burke	Mr Smyth	Mr Berry	Ms MacDonald
Mr Cornwell	Mr Stefaniak	Mr Corbell	Mr Quinlan
Ms Dundas	Ms Tucker	Mrs Cross	Mr Stanhope
Mrs Dunne		Ms Gallagher	Mr Wood
Mr Pratt		Mr Hargreaves	

Question so resolved in the negative.

MR CORNWELL: Mr Speaker, I seek leave to move a motion to remove private members business No 9 from the notice paper.

Mr Corbell: Mr Speaker, the debate has not been adjourned.

MR SPEAKER: There is a matter before us, Mr Cornwell. There was a motion to adjourn debate on a matter that was before us. That was defeated and we are now back to that matter.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.00): I would like to speak to the paper. Mr Corbell raised a number of very important issues in relation to the Australian Health Care Agreement and its importance to the health of all Australians, through our capacity to provide the services that we, as a government, are required to provide for our residents.

The issues around the health care agreement and the split of responsibility between the Commonwealth, states and territories are, of course, at the heart of our capacity to provide the range and level of services it is necessary for us to provide—the level of support and services for people here in the ACT which we, as a government, aspire to provide and which our communities demand of us.

Mr Corbell raised a number of significant issues. He raised them in a considered manner, under a number of headings, and highlighted issues that we as a community face. Those are all real issues. They are issues going to the negotiations currently being conducted by the states, territories and the Commonwealth to settle a new health care agreement.

In response to that, Mr Smyth—the Leader of the Opposition—rose to his feet and engaged in a wild spray around the so-called deficiencies of this government. He had a complete disinclination to address the issues in relation to the health care agreement and the fundamentals—the nature of the responsibilities of both the Commonwealth and the territory.

He made great moment about the disinclination of either myself or Mr Corbell to go out and talk to the Commonwealth, to negotiate a better position for the territory—to achieve greater outcomes and outputs for the territory. This is in an environment where the Commonwealth Health Minister boycotted the last Health Ministers meeting—she simply refused to turn up. That was a meeting duly convened by Health Ministers to

discuss issues around how to deliver, through the health care agreements, the joint responsibilities of the Commonwealth, states and territories for a functioning health care system.

What did the Commonwealth do? What did Mr Smyth's Liberal Party colleague do? What did the federal Minister for Health do? She refused to turn up. Here is Mr Smyth plaintively bleating, "Why don't you go out, talk to the Commonwealth and negotiate a better deal?"

Where was your federal colleague? Where was Senator Patterson? She refused to turn up! She boycotted! She did not want to talk about the health care agreement because of the Commonwealth's enormous embarrassment, particularly about Medicare. I think it was only a week or two—Mr Corbell would be able to confirm it—after Senator Patterson's boycotting of the last Health Ministers meeting that there was a flat, "No. I will not come and talk to you about these issues."

Two weeks later, we find the reason why—we find that she has no responsibility for Medicare. We find that, in the federal parliament, it is the Prime Minister and the Treasurer who are running the debate on Medicare. It is the Prime Minister and the Treasurer who are effectively determining the direction of the federal government's response to health.

Of course, their response was basically all about how much money they need for the war. It is not about how much money we need to maintain a proper and fully-functioning health care system, it is about how much money has been siphoned off to fight the war and how much money is left for Medicare. What do we find? We find there is not much left over.

Then we find the classic rewriting of history around Medicare. Actually, it was never meant to be universal. It was really meant to be only for the battlers. Nobody ever expected, or intended, it to be a universal system. Of course, that was news, and a surprise, to Senator Patterson, almost everybody else in the Liberal Party and indeed in the federal parliament. It certainly was news to your federal Minister for Health.

Now we discover the agenda. The agenda is essentially all about starting a slow, inexorable process of dismantling Medicare as a universal system to push us—to thrust us, to drive us—into a two-tiered health system. That system has been foisted upon us incrementally by the significant underfunding, by the Commonwealth, of their responsibilities for the states and territories, especially, as Mr Corbell discussed, in areas such as aged care and general practice.

Mr Corbell concentrated on issues around aged care, general practice and Medicare—all the issues and items of Commonwealth responsibility—responsibilities they have not maintained. As a result of that, we have seen this massive drop in the availability of bulk-billing, and a concomitant forcing of people, who can no longer access either a GP or a bulk-billing GP, onto accident and emergency. The states and territories are facing an enormous burden in relation to their hospital costs.

That is the crux of the matter. You can say it is all about duck shoving, you can say it is about trying to swap responsibility. But it is essentially all about a lack of commitment,

by your federal Liberal colleagues, to Medicare and to meeting their responsibilities in relation to aged care, general practice and a universal health care system that supports and serves all the people of Australia.

Do not get up here and spray away after you sat on these benches for seven years. We have been here for a year. You sat here for seven years and you jump up now, after seven years on this bench. For seven years, you drove mental health funding from optimal funding, compared to other jurisdictional averages, to the lowest level of per capita funding in Australia. We inherited a system in which per capita funding for mental health in this territory is 18 per cent less than the next lowest jurisdiction in Australia.

We are seeking to address one of your legacies. When we came into government here, we found, having had in 1995-96 a position in which our funding for mental health was at the highest rank of funding jurisdictionally in Australia, a situation where we now fund mental health—or we did until we got here—at 18 per cent less than the next worst jurisdiction in Australia.

That is just one stark illustration of what you did to the health care system in the ACT. I do not know how you dare to sit there and point the finger at us, after a year, compared to your desperate treatment of health care responsibilities in this territory.

Debate these issues seriously. Debate them in the way Mr Corbell did. Mr Corbell raised a range of serious issues.

MR SPEAKER: Order, everybody—order! Members of the opposition will maintain order. Mr Stanhope, if you direct your comments through the chair, they might be less provoked.

MR STANHOPE: I am happy to do that but I did not think I was being particularly provocative.

MR SPEAKER: Neither did I.

MR STANHOPE: I was going to conclude on that point Mr Speaker.

MR STEFANIAK (4.09): I don't profess to be a great expert on health, but I happened to do an auction for the AMA on Friday. I am delighted that they raised over $40,000 for the bushfire appeal. There is a bit more to come, because of the generous donation of an overseas trip by someone. I had a chance to talk to quite a few doctors there. I have also been visited by one recently. A member of Mr Smyth's office came to my office when a doctor visited me recently to discuss some of the problems facing GPs in the territory.

It is interesting that the doctor who came to see me and the people I spoke to last Friday night all had one very big point in common and that was the real problems caused by medical professional indemnity insurance. It was explained to me that they can be sued up to about 27 years after the event. They can be sued not only for negligence, which one would expect might be quite reasonable, but also for accidents. According to these doctors, that more than anything else was driving people out from being GPs in droves.

It does not surprise me that we have the second lowest number of full-time equivalent GPs of any state or territory. I believe this is an area that we, as a territory, need to address quickly, otherwise we will probably have the lowest number of GPs in any state or territory.

Mr Stanhope: That is why we established a medical school.

MR STEFANIAK: I think it is about time you did something about insurance, because there is a real crisis out there, Chief Minister. Act on it!

MR CORBELL (Minister for Health and Minister for Planning) (4.11): I thank members for their contributions to the debate. The whole system of funding for health care in the ACT is a shared responsibility, as it is nationally.

The purpose of my statement is to highlight the failure of the federal government to take its responsibilities seriously. On this side of the house, this government has taken its responsibilities seriously. Mr Smyth stood up and made the trite comment—it could be described only as a trite comment—that he could not think of a single positive that this government has achieved in health care since coming to office. Well, Mr Smyth, try these out for size: $2.6 million for additional nurses.

Mr Smyth: Less services.

MR CORBELL: Are you saying that nurses don't provide services, Mr Smyth? I am sure the Australian Nursing Federation would be interested to hear that. That is $2.6 million for extra services through additional nurses. There has been an increase in the average number of permanent full-time equivalent nurses of 49.9 per cent. There are almost 50 extra permanent full-time nurses on duty as a result of this government's actions. That is not a positive, according to Mr Smyth.

Or you could look at equipment—$3.53 million for equipment, Mr Speaker, including $1.8 million for a multileaf collimator for the treatment of people with cancer; $1.2 million for the purchase of a CT scanner simulator—so that people who do CT scanning have the capacity to train on and use that equipment. According to Mr Smyth, that is not a positive. Then there is just the $200,000 for a nursing acuity system, which will assist nurses in determining the number of nurses needed to safely care for a patient, improving the quality of patient care. According to Mr Smyth, that is not a positive.

Let us look at where else we have seen improvements. The government has provided additional money to address issues around surgery and additional cost-weighted separations. We have focused on key areas. There is additional money for orthopaedics, plastic surgery, general surgery and other medical procedures—an additional 300 cost-weighted separations, an additional 300 incidences of service as a result of the government's funding, and a further 230 on top of that. According to Mr Smyth, they are not positives.

Mr Speaker, it is simply a trite comment from the shadow Minister for Health. Since I have been Minister for Health, I have not received a single question in question time from Mr Smyth as the shadow minister—not one question.. If he professes such a strong

commitment to addressing health care issues which he says are vital, why has he not asked me a question about it? There has not been even one question. He is just not serious.

There has been a 16.3 per cent increase in the health budget since this government came to office, and we have seen more incidences of care. There are the extra 230 incidences and 300 incidences I referred to earlier. We have seen improved provision of equipment; we have seen additional services to support nurses and we have seen extra nurses. Those are all positives in my mind. Those are all positives about improving health care for Canberrans. But, according to Mr Smyth, they are not positives.

Mr Speaker, I will tell you what is not positive and what is not constructive—Senator Patterson refusing to talk to the states and territories about health care reform. We heard Mr Stefaniak stand up and say, "The doctors have these concerns." Yes, doctors do have concerns, but what did the peak body of doctors say when Senator Patterson refused to talk to state and territory Health Ministers? They said it was not helpful, and that she should have been there. That is what doctors said.

This is not just politics. Doctors, clinicians, nurses and allied health professionals are saying that the only way to address the key issues around general care, general primary care and funding for public hospitals is for the Commonwealth to talk to those who provide the services to the people of Australia. That is what doctors, clinicians, nurses and allied health professionals are saying.

Mr Smyth must climb down from his partisan perspective. He needs to stop automatically responding by defending his federal colleague and look rationally at what is going on. That is a decline in GP services; a decline in bulk-billing; less money than we are entitled to, under the current agreement, going to our public hospitals; and less money than we need going to aged care. These issues are the Commonwealth's responsibility. It is the contract between the territory and the Commonwealth. They signed a contract with us about what they would pay us, what areas they were responsible for, and what areas we were responsible for. They have reneged on their part of the contract. In addition, they do not want to talk to us about a new contract.

Mr Speaker, it is not good enough. The Canberra community deserves better. This government is investing more in health care, ensuring we have more nurses, better equipment and more occasions of service. These are the achievements of this government. It is time the Liberal Party joined us in forcing the Commonwealth to come to the party—to come to the negotiating table to address the issue.

Question resolved in the affirmative.

Personal explanation

MS TUCKER (4.18): I wish to make a personal explanation under standing order 46.

MR SPEAKER: Please proceed.

MS TUCKER: In the Assembly this morning, I made a statement pursuant to standing order 246A on behalf of the Standing Committee on Health. I have two corrections to

make to that statement. Firstly, Winnunga Nimmityjah rooms are in Ainslie, not in O'Connor as I stated. Secondly, the committee was advised in a public hearing that Winnunga has 41 staff. However, this advice was incorrect, and the source has now revised this advice. Winnunga has only 27 staff.

Private members business notice No 9—proposed removal from the notice paper

MR CORNWELL (4.19): I seek leave to move a motion to remove private members business notice No 9 from the notice paper.

MR SPEAKER: The clerk was notified by Mrs Cross a short time ago that she wanted that removed from the notice paper.

MR CORNWELL: I seek leave to speak to the removal of the motion, with the Assembly's permission.

Leave not granted.

Suspension of standing and temporary orders

MR CORNWELL (16.20): I move:

> That so much of the standing and temporary orders be suspended as would prevent Mr Cornwell from addressing the Assembly in relation to the removal of notice No 9 from the *Notice Paper*.

MR CORNWELL: I think the matter of the removal of notice No 9 is a commendable decision by Mrs Cross.

MR SPEAKER: Stick to the suspension, Mr Cornwell.

MR CORNWELL: I am, sir. The reason I am stating that there is a need to remove this is that there was never any need for it to be there because of the fact that, if it was sub judice, it could not be discussed within the Assembly. However, if it was not sub judice, then there was nothing to stop anybody moving a motion to the effect that it be debated within the Assembly. Therefore, the Speaker need not be involved at all.

MR SPEAKER: Mr Cornwell, you are going to have to stick to the reasons why you suspend the standing orders.

MR CORNWELL: I am supporting the motion to remove the matter from the notice paper because there was no reason for it in the first place. This is my reason for suspending standing orders—so I can then address this in a more comprehensive fashion.

There was no point or purpose in its being there in the first place. I think the Assembly may have made an error in allowing this to go forward, because clearly the member who put it there was remarkably ignorant of the processes of the house. We should have noted this and advised her accordingly. I do not believe this type of thing is in the best interests of the Assembly. It does nothing for the dignity of the Assembly, the Speakership, or

indeed the speaker himself or herself. Therefore, I would like to address in more detail the issue of removing this notice from the notice paper so we do not have remarkably amateurish result again in this chamber.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.23): The government will support the suspension of standing orders, to allow Mr Cornwell to make the statement he wishes to make—acknowledging, however, as I understand it, that Mrs Cross has indicated she intends to withdraw it anyway. So I am not entirely sure what Mr Cornwell or the Liberal Party think is to be gained by now addressing a matter which has been dealt with. You may think it was tardy; you may think Mrs Cross may have done it earlier; you may think Mrs Cross should have proceeded with the motion if she was serious about it—but that time has passed. We think of a million things in retrospect.

Mrs Cross has indicated that she is withdrawing her motion. I am not sure why you wish to proceed with it. I hope you can do it quickly, so as not to hold up the business of the Assembly. We have an extremely important bill before us, which was held over from Tuesday. It is very important that the matter be dealt with today. It is in everybody's interests that it be dealt with today. We will agree to the suspension, but hope that you will be quick about it.

Question resolved in the affirmative, with the concurrence of an absolute majority.

Private members business—notice No 9

MR CORNWELL (4.24): I thank Mr Stanhope for his comments. I shall be as speedy as possible. There is a reason why I am speaking to this. You are quite right that it has now been withdrawn, three months after it was put on the notice paper and three weeks into the sitting of this Assembly.

We have been sitting for three weeks, and that notice has remained on the notice paper. That is another world first, I suggest, for publicity hounds—three weeks to put a motion of dissent on the notice paper against the Speaker. The reason I talk about this is that it is extremely prejudicial to the status of the Speakership to have this type of thing sitting on the notice paper.

I would suggest that nowhere else in the Commonwealth would this be allowed. The Speaker is the arbiter, the referee—the umpire if you like—of any disagreement in any chamber. Any dissent from his or her ruling should and must be settled immediately so that the Speaker retains the confidence of the house—or not.

You do not delay the decisions of umpires and referees. Why should you delay a decision of the Speaker of any parliament? It is not just only the Speakership as a function of the parliament, but the Speaker himself, or herself, as the case may be, who needs to have this matter resolved promptly. It should not hang around on the notice paper for all to see, because it damages the position, the dignity of the position and the person concerned.

The background alone of the motion indicates its low priority, inasmuch as it was not immediately debated. Nobody was interested in doing so, Mr Speaker—probably

because everyone recognised that the important matter it referred to was sub judice and that, when it was no longer so—I repeat—it could be debated and the Speaker would not come into the issue. Therefore no dissent was needed.

That was understood by all, save one, who is apparently used to getting her way everywhere. That is what I hear around town. It will not be so easy here because, no matter what one does—tantrums or tears, sweetness or light—it is up to the Assembly, to make these decisions, including whether or not something goes onto the notice paper.

I said earlier, Mr Speaker, that the Assembly should be more vigilant in this matter. We should not have allowed this new member, ignorant of the procedures of the house, to do this.

Mr Corbell: On a point of order, Mr Speaker, if Mr Cornwell has accusations against a member, he should state who that member is. Throughout his speech, he has referred to "a member of this place", without referring to who that member is. I think it is quite improper and somewhat cowardly of him to do so. If he is unhappy with the conduct of a particular member, then he should refer to that member by name. Members should refer to other members by their names. He has not referred to the member by his or her name. I am not clear to which member he is referring. The standing order requires members to refer to them by their appropriate titles.

MR SPEAKER: Mr Corbell, I have not sensed an imputation, and I have heard Mr Cornwell talk about a member. It may well be that, if a member wants to raise any serious matters about another member, it ought to be done with a substantive motion. Otherwise, if you have something to say about a member which a member may wish to respond to, it would be fairer, I think, if you let the member know who you are talking about, in order that they might respond to what you are saying.

At the same time, I ask you to be mindful of the requirement not to do that. I draw your attention to standing orders 54, 55 and 56 in relation to offensive words, personal reflections and what my actions might be. Please press on, with that in mind.

MR CORNWELL (4.29): Mr Speaker, I thank you for your guidance. I am conscious that the Chief Minister wants me to wind up. I will do that now by saying that I think we all need to be vigilant about what goes on the notice paper, particularly in respect of matters relating to the Speaker and the Speakership.

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Detail stage

Debate resumed.

Clause 4.

MR STEFANIAK (4.31): I wish to comment on some of the remarks that the Chief Minister made before lunch in relation to Mrs Burke's amendment, which seeks to add example 2A to the Chief Minister's amendment to clause 4. The Chief Minister made a couple of points and there was a bit of inconsistency in the advice of the government's

legal officers. Firstly, he questioned the need for the amendment because, if the people concerned are legally married, that would be the end of it as, obviously, that would mean that they were in a domestic partnership. If that were the case, there would be absolutely no drama, I would think, in putting it in here because that would indeed be the end of it; it would be an example of something which would indicate that there was a domestic partnership—end of story. I think that he was drawing a long bow there.

He was also drawing a long bow in relation to the example he was given, which, as I recall, was a case of A and B having been living together for 10 years and B still being legally married to C, even though they had not lived together for over 10 years, which is not uncommon in our society. If that were the situation, A and B would be quite clearly in a domestic partnership under this legislation; there is no doubt about that at all. Their relationship would be covered as well by section 12 of the Domestic Relationship Act 1994, because they would have been in a domestic relationship for not less than two years.

I do not think that the example holds water because, under the existing law and, indeed, under this new law, that couple would be in a domestic partnership. Again, I say that I think that he has drawn a long bow there and I just do not think that his objection holds water. I think that it would be eminently sensible for Mrs Burke's amendment to be put into the legislation. It would not do any harm to the legislation. Far from it, I think that it would assist.

I think that it is important, too, given what happened when we had the in-principle debate on Tuesday. There is a fair bit of angst in the community. Rightly or wrongly, people are concerned about a downplaying of legal marriages. Whilst legal marriages are part and parcel of this legislation, it certainly does not hurt at all to make that quite plain by putting in example 2A, as suggested by Mrs Burke. I support her in that regard and commend that amendment to the Assembly.

MS DUNDAS (4.33): I will not be supporting Mrs Burke's amendment today. I would like to refresh members on what we did on Tuesday. The Attorney-General has proposed some amendments to section 169 of the Legislation Act. This section relates to references to domestic partners and domestic partnerships. The Legislation Act reads:

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

The Attorney-General has included the following 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".

Subsection (1) makes quite clear that a domestic partner includes somebody who is married to someone else. With this amendment, the Attorney-General is including an example of indicators, a list of indicators, of what should be considered in trying to define whether two people who are not immediately recognised as spouses, because "spouse" relates only to married people, are in a domestic partnership. I think it is very important not to cloud this list by including a reference to whether they are married.

It is unfortunate that people are still denied the right to marry their loved ones if they so choose because the federal government refuses to change the Marriage Act, so we have to fix up our own legislation in the ACT to make quite clear what is a domestic partner. The list of examples includes the length of their relationship; whether they are living together; if they are living together, how long and under what circumstances; whether there is a sexual relationship; how they share finances; their ownership of property; and the degree of a mutual commitment to a shared life, as well as a number of other indicators.

It is not an exhaustive list and it is not an exclusive list, but it is a list that quite clearly tries to bring into scope the reality for people in our community who do live in domestic partnerships and want that recognised under law. By sticking in a reference to whether they are legally married, I do believe that you would cloud this list. We have already stated quite clearly that a domestic partner includes a spouse. I do not see why we need to put it in this list, especially as the list is only a list of examples. We do not need to cloud this list by putting a reference to marriage in there and making courts think that two people who cannot be married should be married to be in a domestic partnership.

I cannot support this amendment. I do hope that the Assembly will see that this amendment is not necessary and that it clouds what we are trying to do today, which is to remove discrimination, not perpetuate it.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.37): At the time of the separation for the luncheon adjournment, I had just concluded responding to Mrs Burke’s amendment and had spoken at the same time about my proposed amendment. Of course, the two amendments are connected.

My amendment No 4, just to reiterate as a consequence of the break, seeks to include the list of indicators which we have been discussing. I did not go through that list of indicators that are there to determine whether two people are in a domestic partnership. The list of indicators that I propose is about whether a domestic partnership exists. This is about whether people who are not married, people who do not have a spouse, satisfy some or all of these indicators, as an aid to determining whether a domestic partnership exists.

Ten are listed. The issues are: the length of the 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; 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; and the reputation and public aspects of the relationship between them. The following note appears at the end of that list of indicators in the proposed amendment:

> 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.

The point has been made—I made it prior to the luncheon adjournment and Ms Dundas has just made it—that this is a list of indicators to show whether two people who are not married are in a bone fide domestic relationship, whether they are in a domestic partnership. The reason for that is that a person who is married is, in any event, in a domestic relationship; they are partners. The definition says, as I mentioned earlier, that a married person, a spouse, is included by specific reference in the definition of domestic partner. The definition says:

> 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, and includes a reference to a spouse of the person.

So, just by that process of elimination, we have a definition of domestic partner. It is someone who lives with a person in a domestic partnership and includes a spouse. We know that, if you are married, you are in a domestic relationship, so we then exclude people who are married when we come to the legislation. The first question the court would ask is, "Are you married?". You would drop your wedding certificate on the table and say, "Yes, we are married. Here's the certificate. And no, we haven't been divorced. Therefore, we are in a domestic partnership. This person is my domestic partner."

When the next group of people came into the court, the judge would ask, "Are you living with this person in a domestic partnership?" The first question he would ask is, "Are you married?" If they say, "No, we are not married, but we do have a domestic partnership," he would then say, "Well, tell me about yourselves. How long has your relationship been? Are you living together? Under what circumstances do you live together? Do you have sex? Are you financially dependent or interdependent?" He would go through the list and a decision would be made on whether they were domestic partners.

To intrude into that list of indicators a doubling up, as Mrs Burke proposes, by adding whether they are legally married is simply surplusage, as is said in the Office of Parliamentary Counsel. I remember it from when I was an instructing officer in the 1970s and the Office of Parliamentary Counsel would say, "That is surplusage." What a beautiful word!

Mr Stefaniak: Maybe they use different words now.

MR STANHOPE: Don't they use that word any more?

Mr Stefaniak: I don't know; I had better ask them.

MR STANHOPE: Anyway, Mrs Burke, your proposed amendment is surplusage. Not only is it surplusage, but also on the advice of my officers, whom I trust absolutely, it would potentially confuse the interpretation of the provision and, to the extent that it would confuse, it is dangerous and should be avoided. The government cannot support Mrs Burke's amendment, as much as we understand her intent. It is unnecessary and, we think, potentially could create confusion because it leaves a question in the mind of those using the list of indicators, "What does this mean? We are not spouses, so why is there this reference to legally married in this list of indicators which essentially is for people who aren't spouses?" It is inherently confusing and should not be persisted with.

The example I gave before to which Mr Stefaniak responded does highlight the potential confusion, that if you include that indicator of whether they are legally married you do create this confusion. As I said, A and B could be a longstanding couple, but B could still be legally married to C, which would not be unusual. It is almost par for the course in this day and age. It is not my circumstance, of course, but not at all unusual for people who are married to enter into other domestic relationships and not get divorced. That is just a fact of life; it is just a reality.

As Ms Dundas said, and said quite well, we are dealing here with realities. We are dealing with the realities around domestic relationships and partnerships that go to make up our society and we are responding to the realities. This sort of amendment just confuses those and pretends that what is real is not real or, if it is real, it would be nice to pretend from time to time that it is not. But we are past that. We just need to face up to the decisions that people make for themselves and do so in the context of relationships that they have.

MRS BURKE (4.45): I will finish on that note and thank the Chief Minister and Attorney-General for his most eloquent response to my request to have certain words inserted into the definitions. I fully understand Ms Dundas' explanation and, as the Chief Minister explained to me yesterday, the definition from the *Macquarie Dictionary* quite clearly is in there.

Far from clouding the issue, Ms Dundas, I just believed that I was broadening the scope of reality. Marriage happens to be a reality, one that we cannot ignore. I just thought I would be broadening it and not confusing the issue. I still do not believe from my advice that I would be clouding the issue. Given that you have just said, Attorney-General, that a domestic partnership does include people who are married, what is the harm in having it in there?

For the very reason that you gave, it would not cloud the issue. When people looked at the list of definitions, they would not feel marginalised or discriminated against in the other way, and aren't we about discrimination? We need to be very careful in this place that we do not have a lopsided situation with the discrimination comments here. I have certainly had people make representations to me that are accepting, and I am certainly accepting, of the definitions here. I think that it is right and reasonable in this day and age that people have that choice and we need to make sure that as a point of law things are right and correct. I would, however, urge this house to consider this amendment. For the sake of sensibility, we must make sure that we do not marginalise married people as part of the reality.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.47): I wish to respond to that point. I do not want to prolong the debate and I will not engage in more than this, but I regret that this debate has been confused with the notion that in some way this legislation is an assault on the institution of marriage. I just want to rebut that.

Mrs Burke: No, I have not said that.

MR STANHOPE: You have, Mrs Burke. I know that you are a person of extremely good heart and all of that, but essentially your position and the position of the Liberal Party in all of this debate has been a position that suggests that this legislation is an assault on marriage. It is not. I just need to make the point—

Mrs Burke: No, I have never said that. No, retract that.

MR STANHOPE: The very comments you just made were to that effect. To the extent that you suggest that this is in some way an assault on marriage, namely, a marriage between a man and a woman, you are. You are not accepting the essential importance of this legislation.

Mrs Burke: I rise to a point of order, Mr Speaker, a point of clarification. I never at any time said—

MR SPEAKER: That is not a point of order, Mrs Burke.

Mrs Burke: Clarification under standing order 55, Mr Speaker.

MR SPEAKER: When debate has finished on this matter, you will be quite free to rise and seek my leave.

Mrs Burke: The Chief Minister should retract what he said. That was not true and he knows it. I never said that.

MR SPEAKER: Under standing order 47, you can explain words.

Mrs Burke: I would like to. Thank you for the opportunity.

MR SPEAKER: But I suggest that you wait until the Chief Minister has finished his speech on that matter.

MR STANHOPE: That was all I wished to say, Mr Speaker.

MR SPEAKER: Pursuant to section 47, you can speak again.

Mrs Burke: Thank you. I did not say that it was an assault on marriage. I think Mr Stanhope jolly well knows that. It was not. Indeed, I have made my points clearly. We need to get on with the debate. There are people waiting anxiously for the outcome and I am sad that you would prolong this debate any further than you have, Mr Stanhope.

MR SPEAKER: That very standing order says that we should not have any debate on that matter.

Mrs Burke's amendment to **Mr Stanhope's** proposed amendment negatived.

Mr Stanhope's amendment agreed to.

MS DUNDAS (4.50): I move amendment No 2 circulated in my name *[see schedule 2 at page 1083]*. The amendment reads:

> (3) For subsection (2), 2 people may be taken to be living together as a couple on a genuine basis even though they have never lived together or have not lived together during a particular period, if there are significant indicators of their being domestic partners.

We have just agreed to the insertion in the legislation of an example of indicators that discusses whether two people are in a domestic partnership. I just want to make it quite clear that, if we are talking about the reality of the situation, then there are a number of people who have raised this specific issue with my office and the amendment today addresses their concerns that they should not be forced to reside together in order for their relationship to be recognised.

The government's proposal leaves uncertain, I think, whether two people who are not living together can be recognised as living in a domestic partnership. I do not believe that this legislation should be prescriptive about how people structure their living arrangements. The ACT Democrats believe that Canberra residents should be able to determine the nature of their relationships themselves and not be excluded from having their relationships recognised simply because they choose not to cohabit during their relationship or for some period.

I note that there is no requirement for people to live together if they are married. In fact, we have already had some discussion today about married couples who no longer live together but who have legal rights under our system of law. I fail to see why we should have a different expectation of people who do not or cannot get married.

This restriction of the definition does not accurately reflect the reality of modern relationships in which a not insignificant number of people are in highly committed personal relationships, often with a degree of financial dependence, although they do not live together for practical or personal reasons. It would be unjust to exclude people in this situation from the right to make medical decisions in relation to their partners, the assistance of the courts in the event of a breakdown in their relationship, or even the entitlements in the event of their partner's death.

It has been pointed out that this narrow definition will disproportionately affect GLBTI people for two reasons. Firstly, because they are unable to formalise their relationships through marriage, they cannot ensure that their relationship is recognised by other means. Secondly, it appears that a disproportionate number of GLBTI people do live separately from their partners for reasons associated with living in a still less than tolerant society. For example, some couples are unable to live together because the relationship cannot be disclosed to their families, perhaps even due to issues of personal safety. Alternatively, some couples may delay cohabitation when there are children from a previous relationship who are taking time to adjust to a new person in their parent's life.

We have inserted the indicators for a domestic partnership, which does mean that there is an additional framework for interpreting what is a domestic partnership and it ensures

that the amendment I have put forward now is not to be taken as being overly broad, but I do believe that this amendment is a workable and fair amendment that seeks to describe the reality of relationships in our community. I do commend this amendment to the Assembly and I hope that the Assembly will support it as an inclusive and meaningful definition and a recognition of the reality that does face the queer community in the ACT.

MS TUCKER (4.54): As Ms Dundas has explained, this amendment proposes the insertion of a subsection which states that people may be taken to be living together as a couple even though they are not physically living together. The example of indicators to decide whether two people are in a domestic partnership refers to whether they are living together and, if they are living together, how long and under what circumstances they have lived together. I understand that this amendment from Ms Dundas is not going to be successful but, in looking at this list, I am hoping that it could be taken into account because there is an "if" in the third point. The words, "If they are living together" seems to imply that they may be, but the other criteria could actually apply and would lead you to the conclusion that, in fact, there was a domestic relationship, even though they were not living together.

I do think that that is very important, particularly for people who are in same-sex relationships in our community. People here would be aware, or should be aware, that there are extreme hostilities in certain situations towards people who are in a relationship and are of the same sex. It can be a critical life decision for people to make to live together because it can mean that, by doing so, they have to forgo a lot of the other things that they want to pursue in their lives. I know one couple in that situation. One of the persons knows full well that, even though he is fantastic in his occupation and is valued in that occupation, if it were known that he had a relationships that was basically a domestic relationship with the other man his job would finish immediately. That is the tragedy of our society at this point in time.

There are other reasons that people are not able to live together but be in a domestic relationship. That can be about children. I know about another situation concerning two women who do not live together because of complications over children but who are most certainly one of the most loving, caring couples of everyone I know and have known. There are definitely circumstances for people which mean that, in fact, they are not living in the same house and yet they are most certainly in a domestic relationship. This is actually an important amendment by Ms Dundas and I am sorry that it is not going to be successful. But, as I said, I am hoping that any reasonable person who was actually looking at this situation in a place of responsibility would see within the criteria that exist here that their circumstances could be taken into account.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (4.57): Mr Speaker, the government will not support this amendment. I understand what Ms Dundas is seeking to achieve. The government's view is that this amendment would represent a significant change to the law. To the extent that there has been some concern about the levels of consultations and the length of the consultation period, I believe that this proposal should have been consulted on at some length.

This proposal would create a significant change to the law as it currently applies to our notion of living together as a couple on a genuine domestic basis—the stock phrase that is utilised in legislation currently in relation to the establishment of whether a de facto relationship exists. All of the legislation that we are dealing with in relation to domestic partnerships or domestic partners goes to that question of whether a heterosexual couple are living together as a couple on a genuine domestic basis and are thereby de factos.

I take the point made by Ms Tucker in relation to the list of indicators that are now a part of the bill, the list of indicators that have just been included as a result of the successful passage of the last amendment. It is fair to say that there is an implication that a couple do not have to be living together at a moment in time in order to satisfy the accepted definition of living together as a couple on a genuine domestic basis. The examples that Ms Tucker uses are, in fact, examples that come before those that decide questions of fact around whether a couple are living on a genuine domestic basis and there are issues around whether a couple separate for the purpose of work commitments.

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

MR STANHOPE: The common examples of those relationships or partnerships where a couple have been determined to be living on a genuine domestic basis and the couple are not living together invariable would go to issues where they are separated as a result of work commitments, perhaps with one person travelling overseas or commuting to work in another city. Other very common examples are where one or other of the partners takes ill and spends extended periods in hospital, where a partner, through a deterioration in health, becomes a permanent resident of a nursing home, and where one or other of the partners suffers a debilitating disease and is institutionalised in the range of institutions or residences that exist. In some of those circumstances, couples are separated at times for decades. Nevertheless, they are recognised as a couple living together on a genuine domestic basis, despite those degrees of separation.

I understand, and it is my department's view, that there is not a single recorded instance of a same-sex couple having been able to satisfy through the courts that they are living in a genuine domestic partnership or relationship where they did not live together. To extend that situation through this legislation to include all relationships is, as I say, a very significant extension of the legislation. But Ms Tucker was right: the question of whether a couple live together on a genuine domestic basis is a question of fact. It therefore is determined according to, or by regard having been had, to all the circumstances that the courts have utilised over the years to determine whether such a relationship exists. We have given some indication of the range of circumstances that should now be taken into account in determining whether such a relationship exists.

They are the points I would make. There is scope within this legislation for couples who are not living together for a range of reasons, where their partnership or their capacity to live together has been either breached or terminated by dint of work or for other reasons decisions are made mutually to live apart for a while.

I think it is important that we do acknowledge that this is a significant extension of the law as currently understood and applied—of course, applied in relation to opposite-sex people living together as de facto spouses—and we would be creating a situation here where there would be a very significant extension of our notion of what constitutes a genuine domestic relationship. I guess I am making the point that it was not the government's intention and the government's intention remains that we should not, through this first tranche of amendments that we are debating today, be pursuing such a significant change to our notion of what constitutes a domestic relationship in this way.

The policy we are seeking to express is simply that couples of whatever gender who have made a genuine commitment to share a life together should be treated the same no matter what the sex of the partners is. We are seeking to change the application of the law. That is what we have been doing in this debate: we have been seeking to change the application of the law so that the law that currently exists in relation to heterosexual couples applies equally to same-sex couples.

We are not seeking through any of the changes we are making here to make essential or significant changes to the law as such. This whole law reform process that we were debating on Tuesday and are debating again today is about changing the application of the law so that the law that would currently apply to heterosexual couples applies in exactly the same way, without variation or discrimination, to same-sex couples. That is the position the government will hold to today.

MR STEFANIAK (5.06): Mr Speaker, I think that there is much in what the Chief Minister says in relation to this amendment. He has gone through a number of examples there. It is a very significant extension of the law, especially in relation to people who have never lived together, and would have quite significant ramifications. I think that he is quite right—even Ms Tucker alluded to it—in pointing out that there is a range of indicators which in some circumstances would enable people who are not living together to be treated as a domestic partnership. Both Ms Tucker and Mr Stanhope have gone through a number of actual examples there. The opposition agrees with the government on this amendment and will not be supporting it.

MS TUCKER (5.07): I want to respond briefly to the last comment from Mr Stanhope that fundamentally this is about treating same-sex couples in exactly the same way as heterosexual people are treated. I just want to make the comment that the treatment is not the same for people who are not heterosexual; it is not equal. In fact, this morning I quoted Dr Martin Luther King Jr as saying, "If you start treating equally all those who have been treated unequally, you capture them forever in their inequality." The situation is not exactly the same, but the point I am trying to make here, which I think everyone else who is involved with the community understands, is that the treatment is not the same.

In saying that we are going to treat them the same as heterosexual people we are not taking into account the fact that same-sex couples are frightened to disclose their relationship, so there is a difference. I understand the argument that this involves taking a big step in law reform, but I just think that the point has to be made that the treatment is not the same. That is why in this instance the people who are advocating and lobbying

for people who are in this situation want a special acknowledgment by way of having the amendment that Ms Dundas has put. That is why I support it.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (5.08): I understand that perfectly well, Ms Tucker; I understand it quite clearly. I also understand that this amendment has not been debated in the public domain, that this amendment has not been a matter of moment. The suggestion is that we should in this law reform package alter in a significant way the law as it is currently applied and has been applied for years in relation to the determination of a domestic relationship.

I do not know when this notion of laws defining de facto relationships was first developed. I do not know how old the common law or statute law on de facto relationships is, but it is old. We have had an understanding of what a bona fide domestic relationship is for ages. I do not feel at all comfortable with a process which changes that here today with absolutely no public debate or discourse. I have received 400 to 500 letters about my assault on the institution of marriage.

Ms Tucker: So have I.

MR STANHOPE: Yes. It is government legislation, Ms Tucker.

Ms Tucker: Which needed support.

MR STANHOPE: Yes. I am not suggesting otherwise. But you know the nature of politics, Ms Tucker.

Ms Tucker: Someone gave your name with my number. I'm getting your phone calls, actually. We are sending them back.

MR STANHOPE: That wasn't done by me, but it is not a bad idea for future reference. But you know what I am saying. In the conversation, the discourse, the discussion about the right of the community to be involved, to be consulted, for us as legislators to connect with them about law reform and changes to the law, if we walked out of here today with a law which says that you do not ever have to live together with a person in order for your relationship with that person to be regarded by the law as a bona fide domestic relationship—

Ms Tucker: With all those criteria.

MR STANHOPE: This is a new criterion. None of those other criteria have ever led to a circumstance, in the opinion of my department, where a court has ever found that a couple who have never lived together were deemed to be in a bona fide domestic relationship. That is the advice I have been given. We are not aware of a single case and now you are legislating that as a matter of fact you do not have to live together for your relationship to constitute a bona fide domestic relationship.

That is a major extension of the law, going from a circumstance where it has never happened, according to the advice that I have received, to a situation where you are

legislating for it. You are legislating for a circumstance in which no couples, whether they be same-sex couples or opposite-sex couples, ever have to live together.

I understand your arguments and I do not dispute them. I accept what we as a society have done to gay and lesbian people, the trauma and pain we have caused them and the suffering that is expressed in their capacity to enjoy their relationships, but I am not prepared today to walk out of here and say, “Guess what, the ACT parliament today legislated that you don’t ever have to live with somebody and we will still regard you as a bona fide partner living in a bona fide domestic relationship.” I just think that that is too great an extension. If you want to get out there and argue it, argue it in the next round, but I do not think that it is appropriate today.

MS DUNDAS (5.13): I would like to take this opportunity to respond to some of those comments by the Attorney-General. This amendment is, as has been said, groundbreaking. I see that as a positive thing, that we are taking, if accepted, a positive step forward to recognise the reality that exists in our community.

I was disappointed to hear the Chief Minister start running the line the Liberals were running on Tuesday that we have not had enough public consultation on this amendment. I can assure you that I did not pull this amendment out of thin air. There was a series of consultations through my office about this legislation, and about this amendment specifically, and it was put to me by a number of people that it was an important step forward in the recognising of their situation.

The Chief Minister has said that this matter has never been an issue in the courts. Perhaps that is true; I do not doubt the hard-working people in JACS. But I pose the question: why has it never been an issue in the courts? Is it because people who were too afraid or unable to live together were then too afraid to take their case to court because of the persecution that so many in our community have suffered over the years?

I do understand that this amendment is not going to be successful today, but I do hope that it will form part of the ongoing reforms that have been flagged through the government’s discussion papers and that we will, as members of this Assembly, recognise that we do live as part of an incredibly diverse population and that we should not be constraining our legal definitions in this way.

As I said earlier, married people do not have to live together—they are married. But we do need to recognise that there are many situations in which, to all intents and purposes, the legislation could apply to people in our community—their degree of mutual commitment to a shared life; their reputation and public aspects of their relationship; whether or not they are having sex; whether or not there is financial interdependence between them—but they are not living together because of societal attitudes about the nature of their relationship.

As I have said again and again, we need to reform our legislation, but we also need to look at how we make this situation a reality in our society. This is the first step and we still have a number of steps to go. I do hope that it will be considered as part of the ongoing legislative reform to remove discrimination.

Amendment negatived.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.17): Mr Speaker, all of the amendments remaining to be moved are identical. I have no desire to engage in a jack-in-the-box contest with Ms Dundas. I am happy to move amendment No 5 circulated in my name and leave all other amendments to Ms Dundas to move.

For the information of members, in every other amendment—there are half a dozen or more—Ms Dundas and I are responding to the same representations by the same constituents and, magically, have come up with exactly the same wording for amendments, essentially relating to intersex people and search powers. I will move my amendment in relation to the definition of transgender persons.

I move amendment No 5 circulated *[see schedule 3 at page 1091]*.

Ms Dundas has exactly the same amendment, but this amendment substitute a new definition of transgender person. As I indicated on Tuesday, the government received representations about the definition of transgender person and this new definition will address some of the concerns that have been raised.

The new definition differs from the original definition in two respects. Firstly, the definition uses the phrase "a different sex" rather than "the opposite sex" so that it does not reinforce the binary notion of gender by presuming that there are only two sexes. This is also consistent with the definition of domestic partnership. Secondly, the new definition does not include intersex people within the definition of transgender person.

I commend the amendment to the Assembly. I won't rise to speak to the subsequent amendments, unless I feel moved by a moment. I will leave all my other amendments which are mirrored by Ms Dundas's amendments for Ms Dundas to move.

MS DUNDAS (5.20): I am happy to support this amendment. As the Attorney-General has indicated, it is identical to an amendment that I would have moved. I am glad that we have been able to work to bring about better definitions for this piece of legislation so that we do recognise what needed to be fixed in the original bill.

This amendment and the next few amendments deal with the issue of inserting separate definitions of transgender and intersex people into the Legislation Act. All the references to transgender and intersex people that this bill deals with are in relation to body searches conducted by the authorities; in particular, the need for transgender and intersex people to be able to elect the sex of the person conducting a body search.

There are further amendments that clarify that, but this amendment goes to the issue of how we define transgender and intersex people. Transgender and intersex people met the government's original proposal with some concern as the definition lumped them together as a single group. In addition, the original definition went back to the old idea of binary gender and refused to recognise that many transgender people do not readily identify as either male or female.

The new definition that we are debating now goes some way to fixing the problem by removing the narrow phrases of talking about the same or opposite sex. I believe that it is the best definition that we have at the moment. I would like to note that if, as a result of the ongoing consultation process, a better definition is found, then I would be happy to look at that as well.

I do commend this amendment to the Assembly. It is incredibly important to a number of people in our community who recognised that we did need to have separate definitions for transgender and intersex people. They are quite distinct groups in our community. I do hope that the Assembly will support this amendment.

MR STEFANIAK (5.22): The opposition is happy with that course of action. I am pleased that Mr Stanhope and Ms Dundas have sorted out the intersex definition. I know how much work Ms Dundas has done on that and we now have a similar definition there. So, in terms of this course of action, the opposition is happy with that.

I have one more point to make which I believe would be best made just before we wrap up the whole debate. The appropriate time is probably just prior to the question being put that this bill be agreed to. I will have one more comment then on behalf of the opposition.

Amendment agreed to.

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

MS DUNDAS (5.23): I seek leave to move the remainder of my amendments together.

Leave granted.

MS DUNDAS: I move the remainder of my amendments—Nos 5 to 30—together *[see schedule 2 at page 1083]*.

The first amendment is the most important, so I will speak briefly to that. It inserts the new definition of intersex person into this legislation. That came about as a result of concerns from the community that the government's original proposal had an incorrect definition of intersex and was included with the transgender definition.

The inclusion of a separate definition for intersex people is necessary because intersex people should also have access to provisions which allow the transgender community to elect the gender of the person conducting a body search. The new definition was developed in consultation with the intersex community and I am confident that it better reflects the reality of intersex conditions.

I would like to respond to something the Leader of the Opposition raised when we were debating this on Tuesday. At the time, the Leader of the Opposition quoted from an email from the Androgen Insensitivity Syndrome Support Group of Australia, saying they had not had enough time to consult on this legislation and were concerned about the definition.

I now quote from an email that came after that email, which I am pretty sure the Leader of the Opposition has seen. It says, "The ACT government has been very mindful of the needs and issues of people with intersex conditions, and, although the AIS SGA had concerns with the legislation, all our issues have been resolved and we are pleased to be able to endorse the bill."

I wanted to put on the record that the AIS support group did have their concerns heard—that both I and the government worked to make sure that this piece of legislation did reflect the reality for people in our community and that we did have a separate definition for intersex people.

The rest of the amendments deal with the ability of transgender and intersex people to elect the gender of a searching officer when required to undergo a full body search. The need for these provisions is important, to ensure we are legislating for the respect and dignity to which transgender and intersex people should be entitled. Depending on the individual transgender or intersex person's circumstances, they may feel more comfortable with either a male or female officer conducting the search, as the case may be.

The government had originally drafted a procedure whereby a transgender person must be searched by a member of the sex with which they identified. Of course, as many transgender people do not identify as either male or female, there may be cases where it is inappropriate—for example, an intersex person who may have irregular genitalia, or a female to male transgender person who may not have undergone reassignment surgery. We are now allowing members of our community to make the election to which they will feel most comfortable, as they go through what is always an invasive procedure—being searched and investigated by police.

I would like to put on the record my thanks to the good process group and the broader ACT queer community for their involvement in the development of this piece of legislation and the amendments. I hope these amendments are successful and that, today, we will be able to complete an incredibly important step in removing discrimination from our laws. The process we have undergone is a very important one, and I welcome the government's ability to move on this issue.

It was important that we got this piece of legislation right. There were a number of issues raised on it, in its original form, but we were able to work to bring about the amendments. I hope the Assembly supports those, so that this legislation is more realistic and more workable—so we undertake this first step towards removing the discrimination that has existed in our laws. It is only the first step. We await the results of the government's consultations for the next stage of removing the discrimination which exists in our legislation.

I hope that process is one that is informed and one which this Assembly approaches with an open mind—so we will not get bogged down in petty procedural debates, but have more focus on the work which needs to be done to remove discrimination from our laws and from our society.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (5.29): I will, for the record, speak to these amendments, Mr Speaker. I think it is important. The government will support each of these amendments. As Ms Dundas has indicated, these are a significant and important raft of amendments to the legislation as initially introduced. They respond to representations received by members of the Assembly.

The range of amendments Ms Dundas has moved, and to which I am speaking, goes to the definition of transgender person. It is complementary to the definition of transgender person. It inserts a new definition of intersex person. As Ms Dundas indicated, I think all members and all offices received significant support, advice and assistance from the Androgen Insensitivity Syndrome Support Group of Australia in relation to this range of issues.

As I said, the amendments go to the definition of intersex person. The amendments omit the interpretive provisions relating to opposite sex and same sex for a transgender person. They include a new provision in each of the relevant acts and regulations, to the effect that a transgender or intersex person may nominate the gender of the person by whom they wish to be searched.

These amendments address the fact that it is not always appropriate for a transgender person or an intersex person to be searched by a person who is of the same sex as the sex with which the transgender or intersex person identifies. The amendments also recognise that, depending on their individual circumstances, a transgender or intersex person may or may not feel comfortable being searched by a person of the same gender as their identified gender. For example, a female to male transgender person may feel far less threatened if searched by a woman.

The amendments to the search provisions also recognise that there may be circumstances where a transgender or intersex person does not identify as either male or female, so it may not be possible for such a person to be searched by a person of the same sex. To address these issues, these amendments provide that a transgender or intersex person may nominate whether they wish to be searched by a male or 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—and all members believe—it is justified in the case of transgender and intersex persons, because of the issues body searches may pose.

Further amendments omit part 1.3 of the schedule, as a consequence of the Discrimination Amendment Bill being debated after this piece of legislation. Similarly, there are amendments that omit the interpretive provisions relating to opposite sex and same sex for a transgender person. These include a new provision in each of the relevant acts and regulations to the effect that a transgender person and an intersex person may nominate the gender of the person by whom they wish to be searched.

The final amendment includes an intersex person in the amendments made to the Remand Centres Regulations of 1976. Regulation 10 relates to accommodation. Sub-regulation 5 requires that sleeping quarters occupied by male detainees should be segregated from sleeping quarters occupied by female detainees. The amendment inserts

a new regulation to the effect that both a transgender person and an intersex person are taken to be of the sex with which they identify, for the purpose of that regulation.

I will conclude by thanking all members for their support for this extremely important legislative package. With the passage of this legislation today, the Assembly has amended 37 separate acts. I think that is a significant law reform effort by the Assembly. I am very pleased that the government has pursued this law reform project to this point.

In the context of that, Mr Speaker, I wish to acknowledge the significant work that has been undertaken within my department and by officers working on this law reform project. As I indicated previously, it was around March last year that I first asked my department to undertake an audit of all ACT legislation. That is laid out before us and gives some indication of the size of the task, with a view to identifying all the pieces of legislation in the ACT that discriminated against same-sex couples.

That in itself was a significant piece of work. That work was undertaken by senior policy officers within the Department of Justice—Bronwyn Leslie and Frances Brown. As a result of that first work, 70 pieces of legislation were identified, 37 of which have been amended today. There is, as we know, another round for consideration by the community and the Assembly in relation to other, more problematic, issues when it comes to community attitude and response.

I should say that, in addition to identifying those pieces of legislation that did discriminate, Ms Leslie and Ms Brown then drafted the issues paper—significant work that was fundamental to the consultation process undertaken by the government in relation to this. The issues paper is an enormous credit to both Bronwyn Leslie and Frances Brown. I thank and commend them for the work they did in the production of that document. It is a valuable document of enormous utility.

Ms Leslie and Ms Brown also then instructed the Office of Parliamentary Counsel to proceed to amend these 37 pieces of legislation, which was a significant bit of work in itself. The task of instructing Parliamentary Counsel in the amendments that need to be made is a major undertaking.

As a result of that, the drafting officers in the Office of Parliamentary Counsel, Mr Nick Horne and Mr John O'Donovan, drafted the package that has been debated today. I thank Nick Horne and John O'Donovan for the significant work they did in drafting this legislative package.

I thank my legal policy adviser, Geoff Gosling, who has been part and parcel of this reform process from the start. I also thank Andrew Barr. He is a member of John Hargreaves's staff and was a consultant to my office on this legislative reform package. He was an important and significant part of the response by my office, especially in the consultation phase of this piece of legislation.

I thank very much Bronwyn Leslie, Frances Brown, Nick Horne, John O'Donovan, Geoff Gosling and Andrew Barr, all of whom played a most significant part in the development of this major law reform package that has been brought to fruition here today.

MR STEFANIAK (5.36): We have seen those amendments, and they are identical. They have the support of the Assembly and we do not have a significant problem with that. In respect of the bill as a whole, whilst there are many things in this bill which probably make things a lot fairer—and that is certainly something the opposition has absolutely no problem with—we want to ensure there is no discrimination.

We feel quite strongly on two points. Firstly, we note the considerable amount of angst, and correspondence, there has been on this issue. We attempted to send the bill to a committee. I think that would have been preferable, given the concern of the community, but that was unsuccessful. We then tried to address the main concerns expressed by many people in our community in relation to this bill—that is, to get good, proper definitions into the bill.

I am not going to reflect on a vote of the Assembly but we clearly sought to amend and define, basically, domestic partnership and the three main types of relationships there—namely a legal marriage, a de facto relationship between opposite sexes and, effectively, a de facto relationship between single sex people. There is no discrimination in that. There are clearly three distinct types of domestic partnerships which I believe reflect the realities of the city in which we live.

It is sad that we were unsuccessful there. I think many people in our community are worried, rightly or wrongly, as a result of that. It is for that reason, Mr Speaker, in relation to that crucial part of this bill, which is the proper definition of relationships, that the opposition will not be able to support the bill.

Remainder of bill, as amended, agreed to.

Question put:

> That this Bill, as amended, be agreed to.

The Assembly voted—

Ayes, 11		Noes, 6	
Mr Berry	Ms MacDonald	Mrs Burke	Mr Stefaniak
Mr Corbell	Mr Quinlan	Mr Cornwell	
Mrs Cross	Mr Stanhope	Mrs Dunne	
Ms Dundas	Ms Tucker	Mr Pratt	
Ms Gallagher	Mr Wood	Mr Smyth	
Mr Hargreaves			

Question so resolved in the affirmative.

Bill, as amended, agreed to.

Discrimination Amendment Bill 2002 (No 2)

Debate resumed from 10 March 2003, on motion by **Mr Stanhope**:

That this bill be agreed to in principle.

MR STEFANIAK (5.43): I seek leave to speak again.

Leave granted.

MR STEFANIAK: Part of this bill, with the passing of the previous bill, flows on automatically, and I note that. However, this bill is more than just a bill that flows on from the Legislation Amendment Bill which has just been passed by the Assembly. There are some additional clauses there, including things like the meaning of impairment. I thank the Attorney-General and his department for the briefing they kindly gave me in relation to this bill. I thank the officers of the department—Frances Brown, in particular—who got back to me in relation to some questions I asked.

I was initially concerned because I was told, in relation to clause 5AA of new clause 10, dealing with impairment, that there were amendments there to pick up future impairment. That is an interesting concept. I was initially told that the Commonwealth has not yet done that. I was advised that the Attorney-General's office would get back to me if other states have done it.

This is fairly significant. It crops up in several parts of the bill, amending sections 49 and 50 of the principal act. The department has got back to me. They indicated that provisions in the Commonwealth Disability Discrimination Act of 1992, the Tasmanian Act of 1998 and the New South Wales Anti-Discrimination Act of 1977 extended the meaning of disability, which in our Act is referred to as impairment, to include possible future disability, and that the amendments in this bill before the Assembly would merely bring us into line with those provisions. They then went on to tell me that some exemptions would be allowed in sections 49 and 50, with which I have no problem.

I note the advice from the Attorney's office, and I would have to accept that at face value. Given that there were the terms future disability or future impairment operating in several other jurisdictions, I was trying to think of any examples where that might have been a problem, or some things that might have occurred which should not have occurred there.

I cannot put my finger on any examples, so I am led to assume that this is a reasonable provision. It is, however, something which has the potential to cause problems. It is something that we as an opposition—and I would suggest the Assembly—should keep an eye on, to see how it pans out. Whilst I have some reservations about it, on the face of it, it would seem to be a provision which has applied elsewhere. As we are merely catching up, it is therefore sensible to put that in the legislation.

Apart from that, there are a number of changes, including a definition of near relative—and several other matters in this bill. It picks up some issues from the previous bill which has now been passed by the Assembly, so the opposition will be supporting this bill, Mr Speaker.

MS DUNDAS (5.47): This bill makes some sensible amendments to the Discrimination

Act which, among other things, gives same-sex couples equal protection from discrimination to that which heterosexual couples have enjoyed to date.

The inclusive term domestic partner has already replaced the term de facto spouse throughout the statute books in most other jurisdictions. It is good to see this step being undertaken here in the ACT. I also commend the move to replace the term marital status with relationship status, in recognition of the reality of the lives of so many people.

The bill also makes a change to the definition of impairment, which is the word used to cover a broad range of disabilities which may be the cause of unlawful discrimination. I have consulted with the disability sector about this definition. They appear to be satisfied with it, so I will be satisfied with it as well.

The new definition is in step with current science, because it recognises that genetic disorders can now be identified before symptoms start to manifest, and that discrimination on the basis of a future disability has become a real possibility.

However, this act does allow discrimination under certain circumstances, including the dismissal of a disabled person where the employer cannot afford to accommodate their disabilities. This is something which I am sure we all have some reservations about, but the reality is that the government has not yet chosen to shoulder the cost of measures to integrate all disabled people into the workplace of their choice.

Some employers will not be able to afford to support a substantially disabled person in their workplace. I hope this is something the ACT government and governments across Australia will revisit down the track. It is to the benefit of our society if all disabled people are able to lead full, productive lives where they work, as much as they are able to do so, and are supported to contribute as they choose.

Finally, this bill allows enforcement of conciliated agreements which are made to settle discrimination complaints. This seems eminently sensible. It is remarkable that this change has not been made sooner. I understand the Attorney-General will be moving amendments to bring the Discrimination Act definitions into line with the legislation we have just passed, removing discrimination and defining relationship status and domestic partner. Those are amendments I will be happy to support. Whilst I have some reservations about the clauses permitting discrimination in employment, the ACT Democrats will be supporting this bill.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (5.49), in reply: As members know, last year I introduced this bill as part of the government’s commitment to ensuring that discrimination laws provide proper protection for the people of the ACT. It is appropriate that it is now being debated in conjunction with the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002—soon to be the Legislation (Gay, Lesbian and Transgender) Amendment Act.

The Legislation (Gay Lesbian and Transgender) Act will include new definitions of domestic partner, domestic partnership and transgender person in the Legislation Act 2001. This bill includes the definitions of domestic partner and domestic partnership in the Discrimination Act 1991.

As a consequence of introducing these new inclusive definitions, the definition of marital status in the Discrimination Act has been replaced by the new term relationship status. That is inclusive of a range of domestic partnerships other than marriage. Again, this is in no way intended to detract from the value of marriage as a social and legal institution—it merely reflects more accurately and equitably the range of relationships in today's community.

The bill also extends the definition of impairment in the Discrimination Act, in order to protect people against discrimination on the ground of possible future impairment. This is a topical issue, as advances in medical science—particularly in the area of genetic information—make it possible to determine that some people have a greater likelihood of developing an impairment than others. This opens up a new potential for discrimination. The government wants to ensure that science does not get too far ahead of the law in this area.

Discrimination law is a way of balancing the rights of particular groups to access work, education and services. Where it conflicts with the interests of others in the community, who may be put to expense and inconvenience in the process, this bill removes an anomaly in the Discrimination Act to allow employers to terminate the employment of a person with an impairment on the same basis upon which they could refuse to employ the person.

The bill amends section 49 so that, if an employee develops an impairment that requires special facilities or services to allow him or her to continue to do the job, and providing those facilities or services would cause the employer unjustifiable hardship, then the employee can be dismissed without unlawful discrimination. In other words, an employer will be able to terminate the employment of a person if the person's impairment is such that, if he or she had not already been employed, the employer could have refused to employ him or her.

This brings the ACT legislation into line with equivalent provisions in the Commonwealth Disability Discrimination Act and removes an unreasonable burden that occasionally falls on employers when an employee develops a serious impairment. The bill also improves the effectiveness of the Discrimination Act by strengthening the agreements conciliated under the act. They will be able to be filed in the Discrimination Tribunal registry and enforced as if they were orders of the tribunal.

In conclusion, the amendments in this bill, together with the new definitions inserted by the Legislation (Gay, Lesbian and Transgender) Amendment Act, fulfil this government's commitment to regular review of discrimination legislation to ensure optimum protection from unfair discrimination for people in the ACT.

As I said before, Mr Speaker, this is exceedingly important legislation. A significant package of legislation has been passed today. It is important because of the changes that have been made and the practical impact those changes will have on the administration of law, in a raft of circumstances and situations. It is also important for its symbolism as a further step forward by this community, in being inclusive, in standing against discrimination, and being prepared to stand up for what is right.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment) (5.54): I seek leave to move my amendments, as circulated, together.

Leave granted.

MR STANHOPE: I move amendments Nos 1 to 4 together *[see schedule 4 at page 1092]*. The government will be opposing clause 5. I table a supplementary explanatory statement to the government's amendments.

Since the Assembly has just passed the Legislation (Gay, Lesbian and Transgender) Amendment Bill, the Discrimination Amendment Bill, which was originally intended to be debated first, needs to be amended. These amendments are to take account of the fact that the Legislation Act 2001 has now been amended to include definitions of domestic partner and domestic partnership. As a result, the Discrimination Act can use those terms without needing to have the definitions included within it.

Amendment 1, which I have moved, omits clause 5 of the Discrimination Amendment Bill, which would have inserted definitions of domestic partner and domestic partnership into the act. Amendment 2 includes a note at the end of the new definition of relationship status inserted by clause 8 of the Discrimination Amendment Bill into section 4(1) of the Discrimination Act.

The note says that the meaning of the term domestic partner can be found in the Legislation Act 2001, section 169. Amendment 3 includes a note at the end of definition of near relative, inserted by clause 14 of the Discrimination Amendment Bill 2002 (No 2). In section 26 of the Discrimination Act, the note says that the meaning of the term domestic partner can be found in the Legislation Act 2001, section 169.

Amendment 4 includes a note at the end of the new section 35, inserted in the Discrimination Act by clause 16 of the Discrimination Amendment Bill 2002. The note says that the meaning of the term domestic partnership can be found in the Legislation Act 2001, section 169.

Mr Speaker, I move these amendments to the Discrimination Amendment Bill (No 2) 2002, and commend them to the Assembly.

Amendments agreed to.

Bill, as a whole, as amended, agreed to.

Bill, as amended, agreed to.

Adjournment

Motion (by **Mr Wood**) proposed:

> That the Assembly do now adjourn.

Gay and lesbian community

MR HARGREAVES (5.58): I rise on what I think is a historic occasion. It is a giant step forward in eliminating an injustice which has been perpetrated on our society for far too long. I want to pay tribute to some people.

Mr Speaker, although this is going to sound a bit odd, I wanted to pay tribute to those members of the opposition who, in their opposition to the legislation, have been true to their convictions. It stands this Assembly in good stead when we have honest people saying honest things. It does not do us any credit when we have people who have different views in here from what is demonstrated outside.

I would like to pay particular tribute to the gay and lesbian lobby in town. If they had not started the movement, people like we members here would not have heard about it, and we would have done sweet bugger-all. As it is now, we have made giant steps forward and the back of this is broken.

I pay special tribute to Bronwyn Leslie and Frances Brown of the Justice and Community Safety Department, who did all of the work to transpose what we wanted into a legislative form. That is not easy, as the former Attorney-General well knows. A complicated piece of legislation, regardless of the subject, takes a certain skill. These people have walked through this minefield—and beautifully so. I want to pay credit to that.

I pay tribute to the Chief Minister's Office—Geoff Gosling and people like that—and to Andrew Barr, from my office, who has led the charge. They also have done an excellent job. I am thrilled, because I have been exposed to, and been fighting, discrimination in many forms since I was a young kid, even though I did not realise I was doing it. To see this going through is really nice. I am pleased to say that my fellow member for Brindabella, Karin MacDonald, has also been especially supportive.

However, I must record my disappointment in the Leader of the Opposition who, according to my memory, foggy as it may be, marched in the Gay and Lesbian Mardi Gras two years in a row, excluding this year. He marched, showing support.

Mrs Cross: Did he?

MR HARGREAVES: He marched, Mrs Cross. Well, he did not. He had both arms together, because he is not a very good soldier. He went in there and publicly showed his support.

Mrs Cross: As himself?

MR HARGREAVES: Well, he certainly did not wear lipstick, as far as I was aware, but he could have. I know that he came into this town and put out press releases saying he supported the rights of gay and lesbian people to be proper and accepted members of this community.

Mr Stefaniak: He does.

MR HARGREAVES: "He does", I hear the Shadow Attorney-General saying. He does support it. Well, let us have a look at the *Hansard,* to see how he voted. I will tell you how he voted—he voted no. Does that mean that he has either gone back on what he told the people two years ago, or he got rolled in his party room?

Mr Stefaniak: You have missed the point.

MR HARGREAVES: Has he stopped beating them up? That is what I want to know. We look forward to his support in the second round. Let's see if he has the courage of his convictions to carry the day and come into this place and support the next round.

MR SPEAKER: Order!

MR HARGREAVES: I am happy, Mr Speaker. I have finished.

MR SPEAKER: Mr Hargreaves, it is disorderly to reflect on a vote of the Assembly.

Motor racing—noise complaints

MR STEFANIAK (6.02): Mr Stanhope—not unnaturally, perhaps, as he is new to the environment portfolio—took a question on notice from me in relation to something I heard—that the Fairbairn Park Control Council might lose several very limited noise credits allocated to local motorsport because Rally of Canberra is using the hill climb track as part of that complex during the Rally of Canberra between 25 and 27 April.

If that is so, I think it is important for the government to make changes. The government should issue special noise credits for that leg of the Canberra Rally, just as it will be doing for other sites during the Rally of Canberra—as it does has always done for the Summernats, and as it used to do for another major motoring event—the V8 Supercar race.

The Fairbairn Park Control Council controls four or five tracks run by local motorsport. They have a limited number of noise credits. I am not going to go into that debate. I might, at a later stage, but I hope not. I thought we had largely sorted that out. It would severely restrict thousands of people who utilise that track for motorsport.

The normal situation for major events such as Rally of Canberra should not be followed. It would be grossly unfair for them to lose any credits because one of their tracks is being used for a major international event which a lot of us, being in the territory, thoroughly enjoy. That would be a bad precedent to set.

In the health debate, I briefly mentioned an excellent fundraiser which I note has not received any publicity in the press. The local AMA and supporting staff organised a function at Belluci's, at Woden, for the bushfire appeal. It is an excellent restaurant, Mr Speaker. I recommend it to anyone. They obviously contributed greatly to the night.

There was not a huge crowd. I was told there were something like 130 people present. That would accord with what I saw there. They raised over $40,000, which is a fantastic effort. A couple of people came up from the New South Wales AMA. They donated a return trip to Dublin. Dr John Donovan then made sure that the winner could take a partner. I thank him for that. As people have until tomorrow to bid in the silent auction for that, the total will be considerably more than $40,000.

It was not a huge crowd, compared with the number when you and I were at the Hellenic Club the other night, Mr Speaker—or indeed when Gordon Scott organised a raffle for Easts at the Albert Hall, at which Ms MacDonald and a few other members were present. It was an excellent effort, nevertheless, and I commend them for it.

Finally, I reiterate to Mr Hargreaves that he is missing the point. The Leader of the Opposition is a very fair man. He has consistently supported the rights of all persons not to be discriminated against. He has consistently supported gay and lesbian issues, in relation to the rights of those people to not be discriminated against. He has tried to tie that up in the context of the debate we have just had.

He is simply crazy, I thought it was fairly obvious why the opposition did what it did. Mr Hargreaves totally misses the point. I think that is a very unfortunate slander he has made against the Leader of the Opposition here today.

Bushfire appeal

MS MacDONALD (6.06): I have just been reminded of the event last Thursday night run by Clubs ACT. It was an excellent event. There was a significant amount of money raised for the bushfire recovery appeal. I know there are other events going on around town. I applaud the spirit of all the people who have got together to raise funds for the recovery effort.

I hope it is not just the same few people being called upon, and that it will be extended right across the Australian community—not just the people of Canberra. The fact that the bushfires happened has placed strain on a number of other charities. There are a number of other places which consistently have monetary needs which are now under additional strain because of the bushfire recovery effort. However, I am sure we will all muddle through.

I wanted to rise principally to welcome the legislation which has just gone through—the Legislation (Gay, Lesbian and Transgender) Amendment Bill. I wholeheartedly welcome this bill. I did not rise during the debate because there were plenty of other people to rise and discuss the issues being put forward. I have received a number of emails—both from people opposed to the issue and those in favour of it.

I have a number of friends who fit into the categories described. I know that, at times,

they have suffered discrimination. They do not receive the same recognition in our society. I believe this bill will put paid to that.

Mr Speaker, I think it is important for us to look at striving towards getting some form of equality, at a national level, for these people. There is still inequality, at a national level, for people who fit into those categories. That is certainly the case from a taxation point of view, and the legal recognition of marriages, et cetera. While there are those in our community who say that it goes against God, or is against their religion, I personally do not feel that way. I think society has well and truly moved on. It is time for us to start acknowledging that there are people in our society who are gays and lesbians, who wish to have and maintain a relationship with a significant other, and to have that relationship recognised.

Housing rental

MS TUCKER (6.09): I want to speak briefly about a matter raised yesterday during the debate on Mrs Burke's motion. That was ruled out of order because it was not relevant to the subject. I refer to the question of private rentals in Canberra at the moment. I want to get this on the record. I am not sure how we address it as an Assembly, or how the government deals with it, but it is of concern.

Since the bushfires, I have had a concerning number of complaints about the fact that the pressure on the market is causing rents to go up. I know it is not normally seen to be a good thing to have rent control in a society which is supportive of the ideology of the market—and that the market will determine a fair price. However, I do not think that works in a disaster situation such as the one we are in at the moment after the fires, when there is an extreme shortage of housing.

I believe there are people making money out of this situation, and that is pretty offensive. One complaint I had was where a couple signed a rental agreement on a three-bedroomed house. Just prior to moving in, they informed the owner that the parents of one of them, who had lost their house in the bushfires, would be living in the house for a short period. The owner then said that the rent would have to be raised while the extra people were living there.

The couple decided that the attitude of the landlord was unacceptable. They decided to leave and not occupy the house. The landlord was not fussed because he obviously had other tenants who were prepared to pay a higher price.

I was very concerned to hear that that had happened in Canberra. I believe there is reason to engage in discussion about the potential for some kind of rent control after a disaster such as we have had—and also generally in the community now. When we have such a tight rental market, the government should take responsibility for keeping an eye on what is going on with rents. It is not an acceptable or just state of affairs if the market is leading to a situation where people are profiting from the lack of availability of rental accommodation and taking advantage of people who can ill afford it.

The Assembly adjourned at 6.12 pm until Tuesday, 1 April 2003 at 10.30 am.

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Schedules of amendments

Schedule 1

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Amendment circulated by Mrs Burke to Attorney-General's amendment No. 4

Example

after
2 whether they are living together

insert
2A whether they are legally married

Schedule 2

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Amendments circulated by Ms Dundas

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

insert

(3) For subsection (2), 2 people may be taken to be living together as a couple on a genuine basis even though they have never lived together or have not lived together during a particular period, if there are sufficient indicators of their being domestic partners.

5
Clause 4
Proposed new section 169B
Page 4, line 4—

insert

169B References to *intersex people*

An ***intersex person*** is a person who, because of a genetic condition, was born with reproductive organs or sex chromosomes that are not exclusively male or female.

6
Clause 5
Proposed new definition
Page 4, line 8—

insert

- ***intersex person***—see section 169B.

7
Schedule 1
Amendment 1.9
Page 7—

omit amendment 1.9, substitute

[1.9] New section 108 (3A) to (3C)

insert

(3A) However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of ***transgender person***, see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(3B) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this section, to be male.

(3C) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this section, to be female.

[1.9A] Section 108

renumber subsections when Act next republished under Legislation Act

8
Schedule 1
Amendment 1.10
Page 8—

omit amendment 1.10, substitute

[1.10] New section 400 (7) to (9)

insert

(7) However, if a child or young person who is a transgender or intersex person is searched under section 399, the child or young person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of ***transgender person***, see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(8) If the child or young person requires that the search be conducted by a male, the child or young person is taken, for this section, to be male.

(9) If the child or young person requires that the search be conducted by a female, the child or young person is taken, for this section, to be female.

9
Schedule 1
Amendment 1.18
Page 9—

omit amendment 1.18, substitute

[1.18] New section 211 (2A) to (2C)

insert

(2A) However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.

(2B) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this section, to be male.

(2C) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this section, to be female.

[1.18A] Section 211 (4), definitions of *same sex* and *transgender person*

omit

[1.18B] Section 211

renumber subsections when Act next republished under Legislation Act

10
Schedule 1
Amendment 1.19
Page 11—

omit amendment 1.19, substitute

[1.19] Dictionary, note 2

insert

1) domestic partner (see s 169)
2) intersex person (see s 169B)
3) transgender person (see s 169A)

11
Schedule 1
Amendment 1.28
Page 11—

omit amendment 1.28, substitute

[1.28] New section 185A

insert

185A Search of transgender or intersex person

(1) If a transgender or intersex person is searched under this part, the person may require that the search be conducted by either a male or a female.

(2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this part, to be male.

(3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this part, to be female.

12
Schedule 1
Amendment 1.30
Page 12—

omit amendment 1.30, substitute

[1.30] Dictionary, note 2

insert

4) domestic partner (see s 169)

5) intersex person (see s 169B)

6) transgender person (see s 169A)

13
Schedule 1
Amendment 1.32
Page 12—

omit amendment 1.32, substitute

[1.32] Dictionary, new definition of *domestic partner*

insert

- ***domestic partner*** includes former domestic partner.

14
Schedule 1
Amendment 1.36
Page 13—

omit

15
Schedule 1
Amendment 1.39
Page 13—

omit amendment 1.39, substitute

[1.39] Section 17

omit

[1.39A] New section 49A

insert

49A Rules for carrying out forensic procedures—transgender and intersex people

(1) This section applies if—

(a) a forensic procedure is carried out on a transgender or intersex person; and

(b) the provision under which it is carried out refers to a person of the opposite sex, or the same sex.

(2) The transgender or intersex person may require that the procedure be carried out by either a male or a female.

(3) If the transgender or intersex person requires that the procedure be carried out by a male, the person is taken, for this Act, to be male.

(4) If the transgender or intersex person requires that the procedure be carried out by a female, the person is taken, for this Act, to be female.

16
Schedule 1
Amendment 1.40
Page 13—

omit amendment 1.40, substitute

[1.40] Dictionary, note 2

insert

7) intersex person (see s 169B)

8) transgender person (see s 169A)

17
Schedule 1
Amendment 1.41
Page 14—

omit amendment 1.41, substitute

[1.41] Dictionary, definition of *opposite sex*

omit

18
Schedule 1
Amendment 1.43
Page 14—

omit amendment 1.43, substitute

[1.43] Dictionary, definition of *same sex*

omit

19
Schedule 1
Amendment 1.45
Page 14—

omit amendment 1.45, substitute

[1.45] Regulation 6 heading

substitute

6 Rules for carrying out searches—general

[1.45A] New regulation 6A

insert

6A Rules for carrying out searches—transgender and intersex people

(1) If a transgender or intersex person is searched under these regulations, the person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of ***transgender person***, see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for regulation 6, to be male.

(3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for regulation 6, to be female.

20
Schedule 1
Amendment 1.46
Page 15—

omit amendment 1.46, substitute

[1.46] Section 42 (2)

substitute

(2) A search of a person under this section must be carried out by a person of the same sex as the person being searched.

(3) However, if a transgender or intersex person is searched, the person may require that the search be carried out by either a male or a female.

(4) If the transgender or intersex person requires that the search be carried out by a male, the person is taken, for this section, to be male.

(5) If the transgender or intersex person requires that the search be carried out by a female, the person is taken, for this section, to be female.

21
Schedule 1
Amendment 1.47
Page 15—

omit amendment 1.47, substitute

[1.47] Section 43 (3)

substitute

(3) A search of a person under this section must be carried out by a person of the same sex as the person being searched.

(4) However, if a transgender or intersex person is searched, the person may require that the search be carried out by either a male or a female.

(5) If the transgender or intersex person requires that the search be carried out by a male, the person is taken, for this section, to be male.

(6) If the transgender or intersex person requires that the search be carried out by a female, the person is taken, for this section, to be female.

22
Schedule 1
Amendment 1.48
Page 15—

omit amendment 1.48, substitute

[1.48] Dictionary, note 2

insert

9) intersex person (see s 169B)

10) transgender person (see s 169A)

23
Schedule 1
Part 1.13
Page 15—

omit

24
Schedule 1
Amendment 1.54
Page 16—

omit amendment 1.54, substitute

[1.54] New section 189 (2A) to (2C)

insert

(2A) However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of ***transgender person*** see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(2B) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this section, to be male.

(2C) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this section, to be female.

[1.54A] Section 189

renumber subsections when Act next republished under Legislation Act

25
Schedule 1
Amendment 1.55
Page 17—

omit amendment 1.55, substitute

[1.55] New section 75 (3) to (5)

insert

(3) However, if a transgender or intersex person is searched, the person may require that the search be carried out by either a male or a female.

Note For the meaning of ***transgender person*** see Legislation Act, s 169A.

Note For the meaning of ***intersex person***, see Legislation Act, s 169B.

(4) If the transgender or intersex person requires that the search be carried out by a male, the person is taken, for this section, to be male.

(5) If the transgender or intersex person requires that the search be carried out by a female, the person is taken, for this section, to be female.

26
Schedule 1
Amendment 1.80
Page 22—

omit amendment 1.80, substitute

[1.80] New section 50 (4A) to (4C)

insert

(4A) If a transgender or intersex person is searched, the person may ask that the search be carried out by either a male or a female.

Note 1 For the meaning of ***transgender person*** see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(4B) If the transgender or intersex person asks that the search be carried out by a male, the person is taken, for this section, to be male.

(4C) If the transgender or intersex person asks that the search be carried out by a female, the person is taken, for this section, to be female.

[1.80A] Section 50

renumber subsections when Act next republished under Legislation Act

27
Schedule 1
Amendment 1.82
Page 23—

omit amendment 1.82, substitute

[1.82] Schedule 2, clause 1

insert

(2) However, if a detainee who is a transgender or intersex person is tested, the detainee may require that the test be carried out by either a male or a female.

Note 1 For the meaning of ***transgender person*** see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(3) If the transgender or intersex person requires that the test be carried out by a male, the person is taken, for this clause, to be male.

(4) If the transgender or intersex person requires that the test be carried out by a female, the person is taken, for this clause, to be female.

28
Schedule 1
Amendment 1.95
Page 25—

omit amendment 1.95, substitute

[1.95] Regulation 7 (3)

substitute

(3) The search of a detainee or his or her quarters under subsection (1) or (2) must, if practicable, be carried out by a custodial officer of the same sex as the detainee.

(3A) If the detainee is a transgender or intersex person, the person may ask that the search be carried out by either a male or a female.

Note 1 For the meaning of ***transgender person*** see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

(3B) If the detainee asks that the search be carried out by a male, the detainee is taken, for this section, to be male.

(3C) If the detainee asks that the search be carried out by a female, the detainee is taken, for this section, to be female.

29
Schedule 1
Amendment 1.96
Page 26—

omit amendment 1.96, substitute

[1.96] Regulation 7

renumber subregulations when regulations next republished under Legislation Act

30
Schedule 1
Amendment 1.97
Page 26—

omit amendment 1.97, substitute

[1.97] New regulation 10 (5A)

insert

(5A) For subregulation (5), a transgender or intersex person is taken to be of the sex with which the person identifies.

Note 1 For the meaning of ***transgender person*** see Legislation Act, s 169A.

Note 2 For the meaning of ***intersex person***, see Legislation Act, s 169B.

Schedule 3

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

Amendments circulated by Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment

5
Clause 4
Proposed new section 169A (1)
Page 3, line 14—

omit proposed new section 169A (1), substitute the following subsection

(1) A ***transgender person*** is a person who—

(a) identifies as a member of a different sex by living, or seeking to live, as a member of that sex; or

(b) has identified as a member of a different sex by living as a member of that sex;

whether or not the person is a recognised transgender person.

Schedule 4

Discrimination Amendment Bill 2002 (No 2)

Amendments circulated by Chief Minister, Attorney-General, Minister for Community Affairs and Minister for the Environment

1
Clause 5
Page 2, line 12—

[oppose the clause]

2
Clause 8
Proposed new definition of *relationship status*, paragraph (f), new note
Page 3, line 9—

insert

Note For the meaning of ***domestic partner***, see Legislation Act, s 169.

3
Clause 14
Proposed new section 26 (2), definition of *near relative*, paragraph (b), new note
Page 5, line 14—

insert

Note For the meaning of ***domestic partner***, see Legislation Act, s 169.

4
Clause 16
Proposed new section 35, new note
Page 5, line 24—

insert

Note For the meaning of ***domestic partnership***, see Legislation Act, s 169.

Answers to questions

WorkCover—annual report (Question No 381)

Mr Pratt asked the Minister for Industrial Relations, upon notice, on 19 February 2003:

In relation to the WorkCover Annual Report 2002:

(1) Supplementation Fund (Annual Report p.101):

A total of $64 million was predicted to be the liability in relation to the 757 claims made against the liquidator at an average of $84,500 per claim.

(a) Given that in the first full financial year, 485 claims have been finalised for a total expenditure of $7.3 million, or $15,000 per claim, leaving a balance of 272 claims with total allocations of $56.7 million or $208,000 per claim, is this figure still accurate or is it likely that performance will be significantly better than originally predicted by both the actuary and ACT WorkCover;

(b) How does the actual settlement amounts compare with HIH's own original estimates at the time of the collapse;

(c) Given the Minister's admission on 20 November that the actuarial report was prepared on less than complete data, how reliable are these figures included in the annual accounts?

(2) Administration Expenses (Page 106):

Administration expenses associated with the Supplementation Fund total $601,322 (or $639,316 on page 108).

(a) How many staff does this expense cover and is this not high compared with insurance industry average workloads, given that there is also the involvement of a supervising insurer;

(b) In addition, why is there a discrepancy between the figures in the Statement of Financial Performance (p.106) and the Statement of Cash Flows (p.108)?

(3) Nominal Insurer Advisory Committee (Page 14):

(a) Given that ACT WorkCover as the Nominal Insurer also sets and collects the levies from insurers and self-insurers based on claims costs, what transparency is there in place to ensure that claims are managed for the best possible outcome to keep levies down?

(4) Construction Industry Safety (Page 23):

According to WorkCover's own figures, 45% of Improvement Notices issued and 82% of Prohibition Notices issued by WorkCover inspectors were for the construction industry.

(a) Is the focus on this industry adequate and appropriately resourced?

(5) Codes of Practice (Page 10):

The fourth dot point on page 10 talks about the 'modernising' of the Codes of Practice. Codes of Practice are generally guides that can be used as a framework for the development of company procedures. It appears that WorkCover want to turn them into "Black Letter Law" so that a breach of a Code or failure to fully follow it is a breach of the Act.

(a) Is this approach consistent with what is happening in other jurisdictions and will it really lead to improved OH&S by making processes more prescriptive?

(6) AIMS Database (Page 10):

The eighth dot point on page 10 talks about the AIMS database. Given that this project has been going for some 4 years now, apart from the graphs in the Construction Industry Task Force Report and some in the Annual Report, it appears that WorkCover are keeping all the information to themselves and not releasing it for others to analyse.

(a) Is this proposed to change and allow access to the database for analysis purposes to other bodies and individuals?

(7) Administrative Expenses (Page 64):

(a) Is it to be assumed that the significant increase in legal expenses is directly related to the HIH claims;

(b) Given that the costs are associated with claims outcomes, is this good value for money; or

(c) Is this amount directly related to the significant commitment in resources to fireworks that is deflecting WorkCover's focus away from OH&S in the workplace.

(8) Nominal Insurer Levies (Page 83):

Nominal Insurer Levies came down to $75,000 in 2001-02, yet administration costs amounted to approx $130,000 or 46% of total expenditure. This ratio appears very high compared to insurance industry average administrative figures of 12 - 15%, particularly when there are only 39 Nominal Insurer claims being managed.

(a) Can the Minister explain why these figures are so high in relation to the insurance industry average?

Ms Gallagher: The answer to the member's question is as follows:

(1) Supplementation Fund (Annual Report p.101):

A total of $64 million was predicted to be the liability in relation to the 757 claims made against the liquidator at an average of $84,500 per claim.

(a) Given that in the first full financial year, 485 claims have been finalised for a total expenditure of $7.3 million, or $15,000 per claim, leaving a balance of 272 claims with total allocations of $56.7 million or $208,000 per claim, is this figure still accurate or is it likely that performance will be significantly better than originally predicted by both the actuary and ACT WorkCover;

The current estimate of liability associated with the HIH Group collapse is $38.8 million, so it is now considered likely that performance will be significantly better than the original estimates.

The earlier predicted liability of $64 million was an actuarial estimate only. The soundness of actuarial estimates depends on the amount and quality of data available to the actuary at the time of preparing the estimate.

The $64 million estimate of liability was based on data to June 2001, and prepared in August 2001, less than five months after the collapse of the HIH Group.

A further actuarial assessment of liability was prepared in September 2002, based on data with a further 12 months of claims development, meaning that the estimate would be more reliable. The estimate of liability prepared at this time was $55 million.

However, the actuary heavily qualified this estimate, because it was discovered at this time that data on which the estimate was based, provided by the HIH Supervising insurer, did not reconcile with the database maintained by ACT WorkCover.

These data problems have now been rectified and the Fund actuary, Taylor Fry, has prepared a new estimate based on this more reliable data. The new estimate of $38.8 million represents an amount of money that has a 90% probability of covering HIH liabilities.

The Government believes that this estimate is sufficiently robust to make decisions regarding the amount of money that needs to be collected for the Fund, as the data on which it is based is more reliable than earlier estimates for two reasons:

- data held by the Supervising Insurer has now been reconciled with the Government's data held by ACT WorkCover. The removal of discrepancies means that the actuary's estimates are more reliable; and

- two years has now passed since the HIH Group collapse, allowing additional time for claims development over this period. Therefore, the actuary's estimates are now informed by a reasonable period of claims experience.

Because of concerns about the immaturity of data on which the earlier estimates were based, and the discovery of data inaccuracies, to date the Government has not introduced a levy on employers to cover the costs of HIH claims.

(b) How does the actual settlement amounts compare with HIH's own original estimates at the time of the collapse;

The Fund actuary advises that HIH provided total case estimates of $26.6 million. It is not possible to compare this with the total of actual settlement amounts until all cases are settled, but at this point the Fund's actuarial estimate of the expected total liability is $38.8 million.

The Fund actuary has advised that there is some evidence that HIH case estimates may have been affected by retardation in claim payments in the lead up to the HIH Group collapse, or a containment of cases estimates, which is not an unusual occurrence in finically distressed insurance companies.

It is not possible to provide information about each individual case estimate prepared by HIH and how this would compare with those cases that have actually been settled to date, as this would involve an inordinate use of Departmental and WorkCover resources.

(c) Given the Minister's admission on 20 November that the actuarial report was prepared on less than complete data, how reliable are these figures included in the annual accounts.

As discussed in the answer to question 1(a), the Fund actuary advises that the earlier estimates of $64 million and $55 million were affected by inaccurate data. Once the problems were identified, action was taken by the Fund Manager and the Supervising Insurer to rectify the problems.

The current estimate of liability is $38.8 million, and future accounts and financial statements will include this updated figure. As time progresses, estimates of liability will be informed by further claims development and experience. Therefore, it is possible that the estimates will require further revision in future to ensure that accounts and financial statements represent the most accurate estimates available at the time.

(3) Administration Expenses (Page 106):

Administration expenses associated with the Supplementation Fund total $601,322 (or $639,316 on page 108).

(a) How many staff does this expense cover and is this not high compared with insurance industry average workloads, given that there is also the involvement of a supervising insurer;

I am not able to comment on the costs included in the insurance industry averages referred to in the question, but I am advised that the $601,322 identified as 'administrative expenses' in the Statement of Financial Performance at page 106 of the

Annual Report did not include costs of employing staff to work on HIH matters. I am advised by the Fund Manager that the reported costs include:

- Professional services - including audit fees paid to the Auditor General and other auditors, accountancy fees paid to consultants who prepare financial statements for the Fund, managerial fees to the Public Trustee for managing investments and staff costs not related to HIH ($318,873);
- Computer costs - including leasing IT equipment and maintenance costs for the AIMS database ($124, 029);
- Payments made to claimants under policies issued by liquidated insurer NEM ($56, 146);
- Rent - office space for staff working on Fund activities ($42,127);
- Security costs – associated with a risk assessment for the AIMS database ($22,881);
- Office expenses – including stationary and furniture ($12,359);
- Legal fees – general advice on the operations of the Fund ($8,818);
- Communications costs – including IT network, phones and provision of data lines ($6,561);
- Other costs – including staff training ($4,513);
- Travel – for instance, to attend liquidators meetings ($2,749); and
- Printing, postage and stationary ($2,266).

This information is included in Note 7 to the Financial Statements at page 115 of the Annual Report.

The Fund does not employ staff in its own right to undertake its legislative functions. I am advised by the Fund Manager that five staff are employed on temporary contracts through ACT WorkCover under the *Public Sector Management Act 1994* to assist the Fund Manager to perform her functions under the *Workers Compensation Supplementation Fund Act 1980.*

The work by staff employed at ACT WorkCover to perform functions under the Workers Compensation Supplementation Fund Act is not directly comparable with the work (or costs of work) of employees of private sector insurers, as their roles are significantly different.

The main functions of the Fund Manager (and staff assisting the Fund manager) are set out in sections 12, 28 - 29 and 34 – 36 of the *Workers Compensation Supplementation Fund Act 1980*, and include dealing with and making payments to liquidators, recovering debts owing to the Fund, approving the terms of weekly payments settlements negotiated by the supervising insurer and referring lump sum settlements to court for approval.

The role of the Supervising Insurer is set out in subsection 30(2) of the *Workers Compensation Supplementation Fund Act 1980*. This includes: investigating claims; where appropriate negotiating the terms of the settlement of the claims and exercising any rights of the failed insurer arising out of an insurance policy.

I am advised by the Fund Manager that administrative costs to the Fund will reduce in future, as many of the staffing costs to date have been associated with due diligence

requirements for the Fund, which are part of the initial review of HIH liabilities, and will not need to be undertaken again.

(b) In addition, why is there a discrepancy between the figures in the Statement of Financial Performance (p.106) and the Statement of Cash Flows (p.108)?

I am advised that the figures differ due to the differing purposes of the Statement of Financial Performance and the Statement of Cash Flows. The Statement of Financial Performance (p.106) presents information on an accrual basis, which involves the recognition of revenues and expenses when the economic transaction giving rise to the movement of resources occurs, irrespective of the timing of any related movement in cash. Similarly, the Statement of Financial Position (p.107) involves the recognition of assets and liabilities when the economic transaction giving rise to the movement of resources occurs.

The Statement of Cash Flow (p.108) involves the recognition and recording of transactions on the basis of the receipt and payment of cash, and does not recognise the timing of related resource movements or the stocks of resources (other than cash) at the end of a reporting period.

(3) Nominal Insurer Advisory Committee (Page 14):

(a) Given that ACT WorkCover as the Nominal Insurer also sets and collects the levies from insurers and self-insurers based on claims costs, what transparency is there in place to ensure that claims are managed for the best possible outcome to keep levies down?

It is not strictly correct to say that ACT WorkCover is the Nominal Insurer. The Nominal Insurer is a person appointed under section 164 of the *Workers Compensation Act 1951*. Ms Jocelyn Plovits, who is also appointed as the Occupational Health and Safety Commissioner, currently performs the functions of the Nominal Insurer.

The Nominal Insurer sets and collects levies from insurers and self-insurers. The formulae used to calculate the Nominal Insurer Levy is based on insurers' market share. This formula and the levy arrangements are the subject of consultation with insurers and self-insurers through the Nominal Insurers Advisory Committee (the Committee).

The terms of reference of the Committee are to provide advice to the Nominal Insurer in the performance of functions and the exercise of powers under the *Workers Compensation Act 1951*, and to allow communication between the Nominal Insurer and approved insurers and self-insurers in relation to levies raised for claims against the Nominal Insurer.

The Committee is constituted of five members representing approved workers' compensation insurers in the ACT and one member representing self-insurers in the ACT.

(4) Construction Industry Safety (Page 23):

According to WorkCover's own figures, 45% of Improvement Notices issued and 82% of Prohibition Notices issued by WorkCover inspectors were for the construction industry.

(a) Is the focus on this industry adequate and appropriately resourced?

The Occupational Health and Safety Commissioner advises that, during 2001-02, WorkCover had a team of five OHS inspectors who were primarily involved in promoting and enforcing compliance in construction workplaces. During this period, approximately 30% of all workplace visits by WorkCover OHS inspectors were made to construction industry workplaces.

The direction of resources by the Occupational Health and Safety Commissioner is informed by statistical profiles and analyses obtained from workers' compensation claim data. The construction industry has a high rate of reported injury claims.

The relatively large number of notices issued in the construction industry in 2001-02 reflects the particular nature of the industry, where workplaces and contractors are constantly changing (in other industries workplaces and personnel are comparatively stable).

(5) Codes of Practice (Page 10):

The fourth dot point on page 10 talks about the 'modernising' of the Codes of Practice. Codes of Practice are generally guides that can be used as a framework for the development of company procedures. It appears that WorkCover want to turn them into "Black Letter Law" so that a breach of a Code or failure to fully follow it is a breach of the Act.

(a) Is this approach consistent with what is happening in other jurisdictions and will it really lead to improved OH&S by making processes more prescriptive;

Codes of practice are guidance documents only, that may, in some circumstances, be accorded evidentiary value by the courts.

It is possible that the content of some codes of practice currently approved under the *Occupational Health and Safety Act 1989* (OHS Act) would be more appropriately included in regulations made under the OHS Act. Regulations, unlike codes of practice, can be used to set minimum legal standards that must be complied with.

Development of new regulations under the OHS Act will be informed by the views of the ACT's tripartite OHS Council and the nationally agreed OHS Strategy and supporting standards developed by the National Occupational Health and Safety Commission.

(6) AIMS Database (Page 10):

The eighth dot point on page 10 talks about the AIMS database. Given that this project has been going for some 4 years now, apart from the graphs in the Construction Industry Task Force Report and some in the Annual Report, it appears that WorkCover are keeping all the information to themselves and not releasing it for others to analyse.

(a) Is this proposed to change and allow access to the database for analysis purposes to other bodies and individuals?

Information held in the AIMS database is subject to the information privacy principles (IPPs) set out in the *Privacy Act 1988* (Cth) which govern management and disclosure of personal information. Therefore, there are some legal limitations on the provision of data records from the AIMS database , for instance, where the data records would identify individuals who have made workers compensation claims.

However, data that is aggregated to de-identify individuals is already provided to a variety of national benchmarking reports, which are publicly available. For instance, private sector workers' compensation data is provided to the Workplace Relations Ministers' Council annual Comparative Performance Monitoring (CPM) report. Information included in the CPM report covers comparisons of:

- compensated injury rates by industry and mechanism of injury;
- compensated fatality rates; and
- average workers compensation premium rates, including by industry.

AIMS database statistics are also published in WorkCover's Annual Report and Strategic Plan and are available on WorkCover's website.

WorkCover will consider specific requests for additional data from the AIMS database, subject to the need to comply with privacy laws, the availability of resources to answer these requests and other budget priorities.

(7) Administrative Expenses (Page 64) :

(a) Is it to be assumed that the significant increase in legal expenses is directly related to the HIH claims;

No. The legal expenses reported on page 64 are not related to HIH claims on the Workers Compensation Supplementation Fund. The Occupational Health and Safety Commissioner advises that these costs are WorkCover expenses and do not relate to Fund matters. Predominantly, the costs relate to enforcement activity under the *Dangerous Goods Act 1975*.

(b) Given that the costs are associated with claims outcomes, is this good value for money;

Not applicable. See answer to question (a).

(c) Is this amount directly related to the significant commitment in resources to fireworks that is deflecting WorkCover's focus away from OH&S in the workplace;

The amount of legal costs for 2001-02 reported on page 64 of the Annual Report does not relate solely to matters arising from the regulation of the fireworks industry (legal

costs are also incurred regarding occupational health and safety and workers compensation matters). However, a significant proportion of this amount does relate to the costs of legal advice and assistance regarding enforcement action under the Dangerous Goods Act.

WorkCover was provided with additional budget funding of $400,000 for 2001-02 to meet legal and security expenses in relation to fireworks matters through a change to the WorkCover appropriation (see page 74 of 2002-03 Budget Paper 4). This means that there has been no deflection of existing resources from the important occupational health and safety education and compliance functions undertaken by WorkCover.

(8) Nominal Insurer Levies (Page 83):

Nominal Insurer Levies came down to $75,000 in 2001-02, yet administration costs amounted to approx $130,000 or 46% of total expenditure. This ratio appears very high compared to insurance industry average administrative figures of 12 - 15%, particularly when there are only 39 Nominal Insurer claims being managed.

(a) Can the Minister explain why these figures are so high in relation to the insurance industry average.

The work performed by the Nominal Insurer cannot be compared directly with claims management costs in the private sector, because the functions performed by the Nominal Insurer are not limited to claims management.

The Nominal Insurer receives numerous requests each year from solicitors acting on behalf of injured workers seeking to establish whether there was an insurer at the time of injury (injuries will have occurred up to 20 years ago). Investigation to establish who was the insurer for a claim (which is necessary to ensure that the Nominal Insurer does not meet the costs of claims which should be made against an insurer) takes significant time and resources.

This investigation and research, which requires additional administrative expenses in the short term, reduces long-term claim costs to the Nominal Insurer. The Nominal Insurer is also required to seek recovery of costs from employers who failed to take out compulsory insurance policies and to take enforcement action where appropriate.

Education—class sizes
(Question No 445)

Mr Pratt asked the Minister for Education, Youth and Family Services, upon notice:

In relation to reduced class sizes from Kindergarten to Year 3:

1) In (a) 2001 – 02 for K – Yr2 and (b) 2002 – 2003 for Y 3, how many of the following classes have been reduced (i) Kindergarten (ii) Year 1 (iii) Year 2 and (iv) Year 3;

2) Can you list which schools have had their class sizes reduced as part of the reduction of class sizes in the early years program in (a) Kindergarten (b) Year 1 (c) Year 2 and (d) Year 3;

3) What is the average size of classes across the board for (a) Kindergarten (b) Year 1 (c) Year 2 and (d) Year 3;

4) Is this a reduction in class sizes in (a) Kindergarten (b) Year 1 (c) Year 2 and (d) Year 3, each year since the beginning of the 2000 school year;

5) How many additional teachers have been hired as part of the reduction of class sizes in the early years of learning in (a) Kindergarten (b) Year 1 (c) Year 2 and (d) Year 3;

6) How many more teachers are expected to be hired in the (a) 2003 school year (b) 2004 school year and (c) 2005 school year;

7) Is the program still running to schedule for completion at the end of the 2004 school year.

Ms Gallagher: The answers to Mr Pratt's questions are:

1) Commencing in the 2002 school year, additional staffing resources were allocated to all primary schools to allow K – Yr 2 classes in all schools to be reduced to 25 students. Further additional staffing resources were allocated to all primary schools from the commencement of the 2003 school year to reduce all K – Yr 3 classes to 23 students.

2) All primary schools were resourced to enable class sizes for Years K-3 to be reduced to 23 in 2003. Some schools may have had some classes of this size in 2002, and therefore may have used the additional resources to reduce class sizes even further or to support other programs in the school.

3) As many primary schools have composite or multi-aged class groupings, average class size figures are not available for individual year levels. For K – Yr 3, the average class size is 21.7 students.

4) The initiative to reduce class sizes in the early years of schooling was planned for implementation over the 2002, 2003 and 2004 school years. In 2002, the class sizes for Yr 1 and Yr 2 were reduced to 25 students. Kindergarten classes were already 25 students. For 2003, the class sizes for K – Yr 3 were reduced to 23 students. Finally for 2004, these class sizes will reduce to 21 students.

5) For the 2002 school year an additional 46 (full time equivalent) teaching positions were created across all primary schools to implement the reduction in class sizes to 25 students. Again as many primary schools have composite or multi-aged class groupings, the figures are not available for individual year levels.

6) A further 86 (full time equivalent) teaching positions were created from the beginning of the 2003 school year. For the 2004 school year, a further 63 (full time equivalent)

teaching positions will be created. No additional teaching positions will be created for 2005 as the program will be fully implemented in 2004.

7) The program is on schedule and will be fully implemented at the commencement of the 2004 school year.

Education—statistics
(Question No 470)

Mr Pratt asked the Minister for Education, Youth and Family Services, upon notice:

In relation to the Education system:

(1) How many (a) government students and (b) non-government students are enrolled in Canberra schools;

(2) Can the Minister provide a detailed list of the number of students at each and every government and non-government school in Canberra from Primary school, to high school and college;

(3) How many (a) male and (b) female teachers are currently working in government schools, can the response please be broken down into individual schools;

(4) How many (a) male and (b) female teachers are currently working in non-government schools, can the response please be broken down into individual schools.

(5) How many IT specialists are employed in (a) government schools and (b) non-government schools, can the response please be broken down into individual schools;

(6) How many bursars are employed in (a) government schools and (b) non-government schools, can the response please be broken down into individual schools.

Ms Gallagher: The answers to Mr Pratt's questions are:

(1) (a) As of the February 2003 Government Schools Census 37,192
(b) As of the February 2002 Non-Government Schools Census 23,420

(2) (a) The February 2003 Government Schools Census details enrolments for each year level at each government school. This document is attached.
(b) Non-government schools enrolments are recorded in the Non-Government School Census conducted by the Non-Government Schools Office in February each year. Census figures for 2002 are attached, figures for 2003 are still being processed and will need to be authorised by the Minister before becoming publicly available.

(3) At the beginning of March 2003, there were 3303 (Head count) or 2870 (FTE) teachers employed in ACT government schools and school support centres.

(a) Of this number, 788 (Head count) or 717 (FTE) were male, and
(b) 2515 (Head count) or 2150 (FTE) were female.

	Head Count		FTE	
	Female	Male	Female	Male
Colleges	345	223	298.9	208.4
High Schools	668	342	569.8	299.1
Primary Schools	1312	198	1121.7	183.6
Special Schools	78	10	62.3	9.3
School Support Centres	112	15	97.3	16.6

(4) The department does not have information on numbers of teachers working in non-government schools.

(5) (a) For government schools, figures on IT specialist or other speciality areas are not maintained centrally. A Skills and Qualifications database is being developed to initially collect this data on the teaching workforce. Government schools employ and contract IT professionals in a variety of ways to best suit their individual needs and IT environments. For example: IT teachers; Information Technology Officers (ITOs); school assistants; maintenance contracts with IT businesses; InTACT support; IT trainees; and "e-coaches" and IT support from Centre for Teaching and Learning Technologies.
(b) The department does not have this information for non-government schools.

(6)(a) Each government primary school has an Office Manager, previously called a Bursar, and each secondary school has a Registrar. Two very small primary schools have a part-time Office Manager. (b) N/A.
[*Census data attached to the reply were lodged with the Chamber Support Office.*]

Consumer Law Centre
(Question No 487)

Mr Stefaniak asked the Attorney-General, upon notice, on 13 March 2003:

1. How many requests for assistance did the Consumer Law Centre receive in its first month of operation;

2. How many of these requests related to the 18 January bushfires;

3. Of these requests, what percentage of people was the centre able to assist with (a) success, (b) no success, (c) cases still pending;

4. What are the top ten issues that the centre has dealt with;

5. How many staff are employed to work at the centre;

6. What were the operational costs of the centre in the first month.

Mr Stanhope: The answer to the member's question is as follows:

1. From the Consumer Law Centre's launch on 30 January 2003 to 20 March 2003, the Consumer Law Centre had approximately 15 active case-files. In addition, the Consumer Law Centre receives an average of 15 to 20 requests for advice each week.

2. None of the active case-files in the legal service directly related to the January 2003 bushfires. A number of the requests for advice have been prompted by the bushfires, but it is not possible to give a precise number. The response to Question four gives an indicative list of action taken by the Consumer Law Centre in reponse to the bushfires.

3. All 15 case-files are still pending.

4. The Consumer Law Centre has not been operational for enough time to develop a profile of the type requested. In no particular order or rank of importance, the issues being considered by the Consumer Law Centre's key issues have been:

    - Establishing contact with agencies such as the Office of Fair Trading, ASIC, the ACCC, Legal Aid, ACTCOSS, the Magistrates Court, the Essential Services Consumer Council, as well as community legal centres and other related bodies. In doing so, promotion of the existence and the function of the Consumer Law Centre has been a priority.

    - In conjunction with Care Inc. the Consumer Law Centre organised and hosted an Alternative Dispute Resolution Forum. The forum brought key persons from the main industry-based dispute resolution schemes in Australia to Canberra. The forum was also the first coordinated event of this type held in the ACT. The forum was attended by consumer advocates, law students and academics, bushfire victims, as well as staff from the ACCC, ASIC and the ACT Office of Fair Trading.

    - The Consumer Law Centre's solicitor also prepares articles for publications. An article warning of misconduct by mortgage brokers was recently published in the Mortgage Professional Magazine.

    - There are, of course, the major case-files, which include matters such as the activities of a home security company, and a matter involving an unsolicited credit limit increase.

    - Provision of advice, either over the phone or on site. Many referrals to the Consumer Law Centre are being made by financial counsellors, the Office of Fair Trading, Legal Aid and other agencies.

    - The Consumer Law Centre, together with Care Inc, has responded to the January Bushfire crisis with:
        a. The publication and distribution of Facts sheets on rights and options on matters such as insurance, home loans and personal finance.

b. Published and distributed a pamphlet advising victims of financial risks, and their rights and liabilities.
c. Submissions to ACTCOSS and to the Department of Justice and Community Safety.
d. Attended a meeting of the Chapman Residents' Action Group and maintained contact with the group's convenor.

5. As per the Consumer Law Centre contract, one lawyer and one administrative staff member.

6. I am advised that the Consumer Law Centre's revised budget for January 2003 to 31 March was $25,750, with a projected expenditure of $23,962.50. The budget allocation for the first year of operation of the Consumer Law Centre is $103,000, with the majority of that figure going towards wages. The first budget report for the Consumer Law Centre is not due until July 2003.

   Subsequent to the member's question, and following agreement between the Centre and the Department, the Centre has employed a part-time project officer for 12 weeks to oversee the "Utility Hardship Intervention Project". Other stakeholders/contributors to that project include the ESCC, Environment ACT and ActewAGL.

I understand that the Consumer Law Centre welcomes any other questions about the operation of the centre.

War protest by school students
(Question No 490)

Mr Pratt asked the Minister for Planning, upon notice:

In relation to the student war protest on 5 March 2003:

(1) Did the Government provide bus services to transport students to Civic to attend the protest on 5 March 2003;

(2) Were bus services organised by school administrations to transport students to Civic to attend the protest;

(3) How many bus services were provided by the Government to transport students to the protest on 5 March 2003;

(4) What was the cost to ACTION to provide additional bus services on 5 March 2003;

(5) What impact will this have on the ACTION budget.

Mr Corbell: The answer to the Member's questions is as follows:

(1) ACTION did not provide either diverted services or special hire services to provide transport for students to attend the protest on 5 March 2003.

(2) Bus services were not organised through ACTION for the purpose of transporting students to the protest.

(3) N/A

(4) N/A

(5) N/A