# DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

# HANSARD

21 August 2003

**Thursday, 21 August 2003**

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

## Long Service Leave Legislation Amendment Bill 2003

**Ms Gallagher**, pursuant to notice, presented the bill and its explanatory statement.

Title read by acting clerk.

**MS GALLAGHER** (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (10.32): I move:

> That this bill be agreed to in principle.

Mr Speaker, the bill that I am tabling today is both a response to and a recognition of the changing nature of the ACT's workforce. The increasing casualisation of the workforce has changed the traditional patterns of employment for more and more workers. Workers are increasingly mobile, meaning that it is now unusual for many workers to stay working for a single employer for an extended period.

The ACT has three statutory long service leave schemes in addition to the schemes that are created by federal industrial awards and agreements. The bill that I am tabling will amend all three statutory schemes.

The proposed amendments to the Long Service Leave Act 1976, Long Service Leave (Building and Construction Industry) Act 1981 and the Long Service Leave (Contract Cleaning Industry) Act 1999 will ensure that public holidays are not counted in periods of long service leave: that is, there will be an additional day's leave for each public holiday that falls within a period of long service leave.

By amending all three schemes in the same way we will ensure a consistency of entitlement for the territory's workers across all three of the territory's long service leave schemes. The proposed changes will have the additional benefit of aligning entitlements under the territory's long service leave scheme with the long service leave entitlements that exist under similar legislation in New South Wales. If agreed by the Assembly, the changes will end an employment anomaly between ACT and New South Wales workers, making it fairer for workers and employers who work across the ACT/New South Wales border.

A further amendment to the Long Service Leave Act 1976 will address another inconsistency with existing ACT and New South Wales legislation around access to pro rata long service leave entitlements. Currently under the Building and Construction Industry Act 1981 and the Long Service Leave (Contract Cleaning Industry) Act 1999 and the New South Wales Long Service Leave Act 1955 workers are able to access pro rata payments of long service leave entitlements after five years of service with employers. Employees are usually entitled to long service leave pro rata payments if they are retrenched.

The proposed amendment to the Long Service Leave Act 1976 will provide that pro rata long service leave payments will be required where employees are made redundant after five years of service rather than the existing requirement for seven years service. The proposed amendments to the bill will establish an equality of entitlement for all of the territory's workers in the private sector regardless of what scheme they are covered by.

Mr Speaker, I ask the Assembly to note the Long Service Leave Legislation Amendment Bill 2003 and the explanatory notes to the bill.

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

## Financial Management Amendment Bill 2003 (No 2)

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

Title read by acting clerk.

**MR QUINLAN** (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (10.35): I move:

> That this bill be agreed to in principle.

Mr Speaker, today I am tabling Financial Management Amendment Bill 2003 (No 2). This bill provides for a number of amendments to the Financial Management Act 1996 in relation to improved financial management processes.

Mr Speaker, during the last election campaign the government advised that it would support a charter of financial integrity. The government considers that the community should be entitled to as much information as possible regarding the true financial state of the territory and that this information be made available in a timely and accessible way.

Rather than having separate charter legislation, the government considers it more appropriate, being a small jurisdiction, to incorporate such provisions into the existing financial management legislation. The Financial Management Act 1996 is the cornerstone upon which the effective financial management of the territory rests and incorporation of the proposed improved financial management provisions into this act will provide a single cohesive financial framework for the territory.

Mr Speaker, the government notes that the opposition tabled in December 2002 the Financial Legislation (Integrity and Responsibility) Amendment Bill of 2002. The purpose of this bill was to improve the scrutiny of the ACT's financial operations by enshrining certain principles of sound financial management into law, and by updating financial information at appropriate intervals, especially prior to ACT elections.

Although the government broadly supports some of the principles included in the opposition bill, we note that the bill is mainly a duplication of Victorian and Commonwealth legislation. As some of these provisions are not suitable to a small jurisdiction, the government has refined the requirements to be more applicable to the

territory's needs. The government has also more cohesively incorporated the new requirements into the existing provisions of the Financial Management Act.

Although many of the financial management practices included in both the government's and the opposition's bill are already being performed, there is no legislative requirement for them to be done. It is considered prudent that these practices be included in the Financial Management Act.

Mr Speaker, similar to the opposition bill, the government enshrines in legislation the requirement for a financial policy and strategies statement to be included in the territory's budget. This statement outlines the government's financial strategies and establishes benchmarks for evaluating the government's conduct of financial policy.

Other current territory budget practices to be legislatively mandated are the requirements for a statement of economic or other assumptions, a statement of sensitivity of the budget estimates to changes in the economic or other assumptions, and a statement of risks.

This bill also introduces a requirement for a mid-year budget review, to be presented to the Assembly 45 days after the end of the calendar year. This review will provide to the Legislative Assembly updated budget estimates to take account of any changed circumstances since the preparation of the original budget. It will include an estimated end of financial year position for the general government sector, as well as updated budget estimates for the next three financial years. A review of the financial policy objectives and strategies statement will also be included in the mid-year report. The proposed timing will align presentation of this information to the Legislative Assembly with the quarterly financial statements.

Mr Speaker, a key provision included in integrity charters used in other Australian jurisdictions is the requirement for a pre-election budget update. This bill requires updated budget estimates to be made available for the territory, general government sector and public trading enterprises at least 30 days before the polling day for an ordinary election.

A new government initiative contained in this bill is a requirement for audited territory annual financial statements to be completed within three months after the end of the financial year if an ordinary election is being held in that year. This initiative ensures that audited financial statements are available prior to polling day.

I trust that members will support this bill as it will improve transparency and accountability. This bill is considered to be an appropriate means for the territory to address the principles contained in other jurisdictions' charters of budget honesty and financial responsibility and ensures that the ACT is once again at the forefront of financial management. Mr Speaker, I commend the bill to the Assembly.

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

## Health—Standing Committee
### Report No 4

Debate resumed from 8 May 2003, on motion by **Ms Tucker**:

That the report be noted.

**MR CORNWELL** (10.40): I am disappointed with this report, Mr Speaker. Apart from, I believe, exceeding its terms of reference, I find it irresponsible in that, without providing costings, it makes 12 recommendations relating to government spending. This is something that has concerned me for some time. Committees bring down reports without any concern for how much it may cost the government and therefore the community, and I really think it is about time that we took this into account. May I say, Mr Speaker, that I make the same complaints in my own committee.

I find this report impractical because it wants to control what I see as lawful advertising and the sale of alcohol at public events. It even wants to restrict cars around schools. I find the report intrusive in that it takes away from parents their own responsibilities in relation to safer sex information and, of course, it makes the headline grabbing recommendation of the provision of condom vending machines in schools.

I also think the report is rather unrealistic. We have recommendations for the control of canteen food. My understanding is that many canteens already take a responsible attitude to the provision of food. I can only assume that the vegans are coming. The report also brings up something called a universal breakfast, which I presume will have to be available to all students, otherwise either those eating it or those not eating it will feel discriminated against. On the same grounds—that is, that some children go to school without an adequate breakfast—are we going to address lunch and perhaps dinner? I don't know. How many students don't have lunch? How many students don't have dinner? Is that the responsibility of schools; indeed, is it the responsibility of government; or is it perhaps the responsibility of parents?

After I had recovered from my initial surprise on reading some of these recommendations, I sat down and tried to analyse just what this was all about and I realised I had misunderstood the intent of this very detailed report. It is in fact a blueprint for a brave new world, where parents have very little say in their children's upbringing; where food, drink, sex education, physical fitness, safety and guiding philosophies are mapped out and provided to the child by a benevolent school system.

Naturally there might be a few difficulties, Mr Speaker, though these are not identified. One of them, however, would certainly be the reaction of adults to this approach—one could say even a Mother Grundyish approach. An example would be the restricted use of alcohol at all public events, which is outlined at recommendation 4.158(e). I wonder what old diggers on Anzac Day would think about all this?

Another example is the ban on cars being driven in and around school zones. Apart from the convenience of being able to drop off out-of-area children—and I suppose this ban could be interpreted as an attack on the non-government school sector—there is, of course, a safety aspect. Many parents prefer to drive their children to school. They are not game to allow them to walk or to ride to school on public transport because there are too many nasty people out there. They are concerned about the safety of their children, and I think that is a reasonable concern in this day and age. Certainly it is a justifiable concern because, even in the event that some of these nasties are apprehended, the courts seem to hand out very little punishment.

The report, I think, is self-righteous and assumes a high moral ground. Some 11 of the recommendations interfere with private life without asking permission to do so. In fact, parental involvement is mentioned once in 48 recommendations.

I appreciate that these days parental responsibility is almost an oxymoron. It is neither sought nor encouraged. Indeed, one could wonder why the committee did not just recommend taking children at birth and bringing them up like the Spartans used to—let the state control them. However, it did not do so.

Those are my criticisms. I wish, however, to end on a more positive note and identify a couple of matters that I do commend. The first matter concerns recommendations 8 and 27, which relate to nutrition. Although I think this subject could be regarded as a little outside the terms of reference, I commend these two recommendations because—and obviously the committee thinks this as well—I have long believed that the behaviour of some children is a direct result of their diet, what they eat. It is very difficult to identify, on occasions, just what in a diet is perhaps causing problems among children. Where do you start?

We know that children should not eat red jellybeans or something like that because they make them hyperactive. But this is at the periphery of the problems, Mr Speaker. I do not know how we can necessarily investigate thoroughly the problems of nutrition in so far as what children should not eat, but I think we have got to make some sort of start. I believe that a lot of the problems that children face—problems even into adulthood—could be overcome if their diet was improved and if they avoided eating certain identified foods. We all know of people who cannot eat certain things. But, I repeat: this is only at the periphery of this issue. I think it is a much bigger problem than we realise and we would save a lot of pain and expense if we devoted more time to identifying dietary problems.

I also commend recommendation No 43 in relation to carers—people who I think are very often undervalued in this society. I was interested to find in recommendation 44 reference to Gatehouse project. I support the project, although I must say that, from my reading of it, it seems to me to be what the country used to have before the progressives took over and created the new society, the shambles of which they are now seeking to correct in respect of our young people. Nevertheless, I repeat that overall I am disappointed with most of this report.

**MS DUNDAS** (10.50): I rise to add my support to the report of the Health Committee on the health of school-age children in the ACT. It is a comprehensive report that covers a whole range of aspects affecting the health of young people in our community. I am disappointed that this debate has gone on over a number of weeks. However, it is interesting to go back over what was said earlier in the debate and what was said by Mr Cornwell today because he seems to have completely missed the point of what the report of the Health Committee is trying to achieve.

Mr Cornwell talked about the report being a blueprint for a brave new world. He said that parents drive their children to school because they do not want them walking around our community where there are nasty people. If we give in to that attitude, if we give in to the fact that there are nasty people out there and do not try and make this situation

better, then of course we will continue to live in a nasty world. But I think as leaders in this community we do have a responsibility to take steps forward, and it is reports like these that clearly highlight problems facing our children that could then lead them into being perhaps the "nasty people". If we do not take steps to prevent this and help our children have healthy lifestyles, then of course the world is going to get worse.

This report touches on a number of topics that affect children in schools in a whole lot of different ways—from body image, to sexuality, to substance use, to fitness testing—and raises some very important points about how we treat children in our schools and how we value what is important in their education. I do not think it is about moving parental responsibility away from parents and onto schools. It is about recognising that there are different challenges facing young people today and being able to respond to the fact that schools do have an important role to play as the place where the majority of children spend the majority of time over their developmental years.

One of the questions in the report that I was particularly interested in is how sexuality is dealt with in our schools. There was some disturbing evidence presented in this report about continuing violence and discrimination against young people who may be gay, lesbian or bisexual, and how that is dealt with within our schools. The continuing marginalisation of these people in our community, starting from school age, does nothing to make our community a better place to live in. I strongly support the recommendations, and recommendation 34 and 35 in particular, which call on the ACT government to do all that it can to reduce homophobia in our schools. If we can reduce homophobia in our schools then hopefully this can lead to reducing homophobia in our community.

Another important recommendation that I am also fully supportive of is recommendation 33. This recommendation, which spurred a lot of debate when we were discussing this report earlier, reads:

> The Committee recommends that condom vending machines be installed in all high schools and colleges, in consultation with students to determine appropriate locations.

As members of this Assembly would be aware, since taking up my role as a member of this Assembly I have been calling for greater accessibility to condoms in our schools. What I have said has been ridiculed and scoffed at by some members of the community. However, almost every single young person I have spoken to has supported me. They are crying out for greater information about sex education and greater support as they go through what can sometimes be traumatic times of learning about their own sexuality, learning about the sexuality of others, and how they all come together.

Earlier in the debate both Mr Pratt and Mr Stefaniak made the point that parents send their children to school to be educated; parents do not send their children to school to have sex. I agree with that point—schools are designed for education and assisting our children to develop knowledge and skills to help them through the rest of their lives. Sex is actually something that does happen, it is part of people's lives, and a school is a very important part of passing on education about sex, especially safe sex.

I know that ACT government schools promote and have different courses regarding sex education and that some schools—not all schools—talk about the importance of

condoms. Young people have spoken to me about double standards. They have said, "We are continually told that we need to be having safe sex and that we should be using condoms but then we cannot access them because our schools refuse to have them. We cannot find them, we cannot get hold of them." They have said that this is very confusing.

Report after report shows that the rates of sexually transmitted infections are increasing, especially among young people, not just here in the ACT but across Australia. There is a lot of concern around the world about the spread of HIV and AIDS. Recently my attention was drawn to a quite shocking statistic that every day 3,500 young people contract HIV. This is a shocking statistic about what is going on in our world today.

We cannot continue to bury our heads in the sand about this and say it is not happening in Australia, so we do not need to talk about condoms in schools. We do need to be talking about safe sex education. We do need to be talking about condoms in schools, and we need to be doing it in a way that realises that young people do have sex. They might not be doing it at school but it is something that is happening, and we cannot continue to wrap our children in cotton wool and think that they will be okay.

A number of points are raised in this report about substance abuse, violence and bullying. These practices are impacting on our children and we need to take positive steps to address these concerns. About a month ago I was speaking to a young woman about her drug taking. This 15-year-old drinks quite substantial amounts of alcohol, she smokes, and she uses illegal drugs. The reason she does so is that she believes it gets rid of her problems. We tried to explain to her that whilst these drugs might get rid of her problems for an hour or a day, they will not solve them; they will not make the situation better in the long term.

We are not doing our children any good if we allow them to engage in a perpetual cycle of thinking that there are escapes to the issues facing them. We need to be teaching our children as soon as we possibly can to look after themselves, to practice safe sex, and to be able to speak out against violence. We need to be doing this now. Unless we look at this debate in a proper way as opposed to just pretending that our young people are all okay, we will truly devalue and fail them as they try to become vibrant members of our community, both at a young age and as adults. I truly hope that we do not let that happen.

I commend this report and I thank the Health Committee for the work that they have done to bring it together. I hope the government considers all of the recommendations seriously and that we can finally get rid of the draconian education department policy that says that sex is only for procreation, that young people don't procreate and, hence, we don't need condoms in schools. I am horrified that that is a policy that exists in the ACT today. We need to grow up and address in a healthy way that values our children as vibrant members of the ACT what is really happening to our young people.

**MS TUCKER** (10.59), in reply: I thank members for their contribution. I will respond to some of the points that Mr Cornwell raised. His first complaint was that there were not any costings. I was not aware that this had been raised before as a serious issue, though I understand Mr Cornwell has been raising it in his own committees. This is an interesting question because if we are going to demand that committees cost every single recommendation, obviously that is going to be a cost on the government, and I do not

think it would be a particularly useful allocation of the committee's or the government's time.

I am sure that Mr Cornwell is aware that clearly recommendations are recommendations only. Government can, of course, not agree to implement recommendations. So I would suggest that to ask them to fully cost every recommendation of a committee's report before they have decided to implement them would be a waste of taxpayers' money.

The role of a committee is to look at the policy—in this case, social policy—taking into account the evidence that is given to it and to make recommendations to government. Those recommendations are made with a consciousness that there may be resource implications. Of course, not all recommendations have resource implications. But committees are always well aware of this and it is something that we assume and know that government will look at.

The recommendations in this report are far reaching. The committee did not expect that government would respond overnight and pick them all up. But this is a substantive body of work which hopefully will inform government policy. The report is the result of evidence bought from community, academia and the government itself. I do not think Mr Cornwell has thought this through and I reject what he said.

The other general complaint that Mr Cornwell made was that we moved outside the terms of reference. I find that an interesting comment. To summarise, the recommendations basically looked at a number of issues. For example, participation with young people and the community to develop policy: I don't see how that is outside the terms of reference of any public policy area. Indigenous health: pretty relevant to the health of school-age children. Provision of medical centres: pretty relevant to the health of school-age children. Physical education: pretty relevant. Nutrition: very relevant. Youth centres and community support services in colleges to support young people in their lives, and obviously particularly relating to health care: pretty relevant to the health of school-age children.

Drug education: I cannot see anyone saying that is not relevant to the health of school-age children. Environmental pollutants: we know people get asthma and they cannot perform very well at school and I think that is pretty relevant to the question of the health of school-age children. Counselling and mental health: it would be hard to see how that was not relevant. Body image: we know how absolutely disruptive to people's lives eating disorders are and I cannot see how that is not relevant. The question of sexuality: we know that sexual health is a major issue for young people; it is certainly relevant to the health of school-age children. Getting pregnant really does have an impact on the health of a person at school. Probably they do not go to school when they are in the later stages of pregnancy and after the baby is born. So I think that is fairly relevant.

Sexual violence and sexual assault: the evidence is pretty clear that young people who suffer from sexual violence do not fare too well and that certainly has an impact on their capacity at school. So it is pretty relevant. Transport is obviously relevant. As the committee explained quite clearly, it is related to the question of physical fitness and health. Violence against women and young girls: I have already dealt with that. Bullying: very relevant to the health of school-age children.

The situation of carers, who are not able to participate in school because of their caring responsibilities, is obviously also very relevant, and Mr Cornwell did acknowledge that he though that recommendation was useful. The question of supporting families is, of course, relevant to children. Families need to be supported if you want to give children the best possible opportunities to have a fulfilling experience at school. Urban planning: that is also related to the physical health of children and their physical activity. So I really cannot see how there can be any charge that we moved outside the brief of the health of school-age children.

Mr Cornwell focused predictability on the question of sexuality, sexual health and contraception. I have to point out to Mr Cornwell again that it is argued in credible medical journals that the constant pressure of sexualised images in western countries creates pressure on adolescents to have sexual relationships. In addition, Australia has the sixth highest teenage pregnancy rate among OECD countries. Yet in Australia there is no coordinated policy response to youth sexual health.

I cannot believe the ill-founded but powerful sentiment that the education of children and young adolescents about contraception and safe sex will promote earlier sexual activity. The rate of chlamydia infection among young people has dramatically increased in the last few years. Providing contraception and providing education programs about sexual health for young people has even been shown to decrease the rate of sexual activity among people. I am especially passionate about this in the face of the empowerment of young women growing up in a society that places many pressures on who they should be and what they should do.

I will quote for Mr Cornwell's benefit the results of a recent Western Australia research project on current priorities for adolescent sexual and reproductive health in Australia. The document states:

> Adolescent sexual and reproductive health is an important issue for the Australian population. Pregnancy, childbirth and sexually transmitted infection are major contributors to overall morbidity in the adolescent age group. Legally induced abortions were the second most common hospital procedure and reason for hospital admission in young women aged 12-24 years in Australia in 1997-98, and issues relating to family planning and female genital disorders (combined) represented the most common reason young women consulted general practitioners in 1998-1999. The longer-term implications of teenage pregnancy and STI are considerable. If we are to optimise the economic, social and physical health of all Australian adolescents and young adults, we cannot ignore the role that sexual wellbeing plays in this agenda.
>
> Adolescents are undergoing developmental processes that may lead to risky sexual behaviours. Adolescence is characterised by belief in one's immortality, a desire to experiment, the seeking of peer approval, relatively short-term relationships, and unrealistic expectations about the likelihood and consequences of pregnancy. We also know that Australian teenagers are putting themselves at risk of pregnancy and STI. Teenagers are the most frequent users of emergency contraception at Australian Family Planning clinics, 45 per cent of sexually active Australian high-school students do not use condoms consistently, and 31 per cent use condoms without another form of contraception.

> As adolescents delay seeking prescription contraception for an average of one year after initiating sexual activity, it is perhaps not surprising that half of adolescent pregnancies occur in the first six months of sexual activity. For this reason, and the fact that younger age is a strong risk factor for *Chlamydia trachomatis* (CT) infection, effective prevention strategies must include young adolescents, ideally before they become sexually active.

I would be happy to give Mr Cornwell a copy of that report if he is interested in reading it.

Mr Cornwell was also concerned about the recommendation to have breakfast programs. I think it is a tragedy that children are not fed properly when, on the whole, society definitely has the resources to feed them. In my view the issue is not one of making the judgment, "Well, those parents are irresponsible, they need to take responsibility; we'll just let those little children who do not have the opportunity to have decent nutrition suffer the consequences because their parents are irresponsible." That is a particularly judgmental view which lacks compassion. It also lacks an understanding of the long-term consequences for society if little children do not even have that basic support.

We have made a recommendation about parent support and we have, of course, acknowledged the need to support families that are dysfunctional. *(Extension of time granted.)* Mr Cornwell, of course, has the right to take that judgmental attitude, but those people in the community who are interested in looking at not only what it is like to be a little child who does not get fed properly but also the broader societal consequences of not supporting such children, disagree with him.

Question resolved in the affirmative.

## Discharge of orders of the day

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

> That the following orders of the day be discharged from the *Notice Paper*:
>
> No 4 relating to the Standing Committee on Planning and Environment's Report No 13 on Draft Variation No 187 to the Territory Plan—Heritage Plan—Red Hill Housing Precinct.
>
> No 5 relating to the Standing Committee on Planning and Environment's Report No 14 on Draft Variation No 175 to the Territory Plan—Industrial B3 Land—Industrial Area Policies and definitions: Fyshwick, Symonston, Mitchell and Hume.
>
> No 6 relating to the Standing Committee on Planning and Environment's Report No 15 on Variation No 200 to the Territory Plan—Garden City Variation—Residential Land Use Policies, Modifications to Residential Codes and Master Plan Procedures.
>
> No 10 relating the Standing Committee on Planning and Environment's Report No 17 on Draft Variation No 150 to the Territory Plan—Deakin Blocks 14 and 15 Section 36 (former Deakin Oval Sports Ground)—Proposed Residential and Urban Open Space Land Use Policies and Changes to the Public Land Overlay.
>
> No 11 relating to the Standing Committee on Planning and Environment's Report No 19 on Draft Variation No 210 to the Territory Plan – Deakin Section 35 Block 2 (site of

former Deakin Motor Inn) and Section 35 Block 28 (Canberra West Bowling Club)—Commercial E Policy and Residential Use.

## Public Accounts—Standing Committee
### Statement by chair

**MR SMYTH** (Leader of the Opposition): Mr Speaker, I have been authorised by the standing Committee on Public Accounts to make a statement on their behalf under standing order 246A concerning a new inquiry. The Standing Committee on Public Accounts agreed on 6 August 2003 that the committee would resolve to undertake an inquiry into the General Agreement on Trade in Services, with special reference to: the implications for governance in the ACT; the impact on regulation, funding and provision of central services; the capacity for flexibility in local decision-making; consultation with the community; sustainability; and any other related matter.

The committee will shortly advertise the inquiry through the print media, invite submissions from interested groups and individuals, and later hold public hearings. The closing date for submissions is 30 September 2003 and the committee is expecting to report to the Assembly before the end of this year.

## Health—Standing Committee
### Statement by chair

**MS TUCKER**: Mr Speaker, I wish to make a statement regarding a new inquiry. The Standing Committee on Health has resolved to conduct an inquiry into and report on maternity services in the ACT, with particular reference to: continuity of care available throughout pregnancy and during and following birth all areas and professional services related to the delivery of maternity services; comparative costs and benefits of different models of maternity services and systems; strategies for involving consumers in the planning and provision of maternity services; impact of medical indemnity insurance on the provision of maternity services; and any other related matter.

## Executive business—precedence

*Ordered that executive business be called on.*

## Totalcare—disposal of undertakings

**Mr Quinlan**, pursuant to standing order 128, fixed the next day of sitting for the moving of notice No 3, executive business.

## Civil Law (Wrongs) Amendment Bill 2003

### Detail stage

Clause 1 agreed to.

Clauses 2 to 9, by leave, taken together and agreed to.

Clause 10.

**MR STEFANIAK** (11.15): I move amendment No 1 circulated in my name *[see schedule 1, at page 3088]*.

One of the things I quite like about this bill is the codification of some of the actual principles. I do think it is important to actually get them right. In looking through the bill, I saw what could well be an anomaly which I think could be tightened up and made more effective. Under "Mental harm—duty of care", on page 6, clause 30A reads:

> (1) a person (the **defendant**) does not owe a duty to another person (the **plaintiff**) to take care not to cause the plaintiff mental harm unless a reasonable person in the defendant's position would have foreseen that a person of normal fortitude in the plaintiff's position might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.

The area of mental harm is relatively new in many ways and is still fraught with difficulties, and the term "might" does cause me some problems, because the person—is the defendant who's being sued has to satisfy a test that they have to have foreseen that a person of normal fortitude—and that might be difficult in itself—in the plaintiff's position is the person bringing the action might have suffered a recognised psychiatric illness. That's a very different test. The word "might" is a very different word to what is normally the word in these types of situations.

If people look at "Duty of care" on page 8, "Precautions against risk—general principles", 31F (1) (c), the more normal test is used. It states:

> in the circumstances, a reasonable person in the person's position would have taken those precautions.

In (2), the word "would" appears again. I would think that that test, which is to me a much more normal, regular test in terms of whether people would or should have done certain things, should apply on page 6 in clause 30A (1). I think "might" is probably the inappropriate word there. I think "would" would be more consistent with the rest of the act and would be, in many ways, somewhat tighter in this difficult area.

We're all aware of persons who claim all sorts of things and say they've been dramatically affected by something, and that turns out to be arrant nonsense at the end of the day. Probably one of the problems here has been that some people might have got away with damages they weren't realistically and reasonably entitled to at the end of the day. "Might", I think, might lead to some of those situations more than the word "would"; the word "would" is more consistent, and that is the reason behind that particular amendment, which I commend to the Assembly.

**MS TUCKER** (11.19): The Greens will be opposing this amendment. I must say that I don't know how anyone could foresee that a person of normal fortitude would suffer a recognised psychiatric illness if reasonable care were not taken; it just doesn't make sense. Mental illness isn't like that. You could argue that it might occur, as the legislation presently allows, or even that it would be likely to occur, if you wanted to protect defendants further.

But to argue that there is no duty of care unless it could be foreseen that a person would suffer a psychiatric illness is ludicrous and callous in the extreme. It is designed essentially to rule out just about all responsibility for mental harm for anyone who is already known by the defendant to be mentally fragile before the event. This is not acceptable, and I can't support it.

**MS DUNDAS** (11.20): Mr Speaker, the Democrats cannot support this amendment. The amendment moved by Mr Stefaniak, if successful, would probably deny compensation to all people who suffer mental harm as a result of witnessing an accident. Some people are severely affected when they witness a shocking accident, presumably because they have a slight predisposition to mental illness. Some people who are closely connected with an injured party also suffer serious mental harm triggered by a harmful event.

This area of Australian tort law emerged in 1984 with the case Jaensch v Coffey and is now well established through medical evidence presented in numerous court cases. While judges have been satisfied that some people who witness accidents suffer a recognised psychiatric illness as a result, it is certainly not most people who are also severely affected in these situations. The correct test is clearly that a normal person might suffer a psychiatric illness in the circumstances, not that a person of normal fortitude would suffer such an illness.

If this amendment is successful, it would deny compensation to people who are genuinely and seriously affected by the wrongdoing of another person. This is not in the interests of justice.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.21): Mr Speaker, similarly the government won't support this amendment, for the reasons outlined by both Ms Tucker and Ms Dundas. We believe, as do the Greens and the Democrats, that the proposal that Mr Stefaniak put simply establishes far too high a threshold that would require that mental harm not eventuate essentially unless there were 100 per cent vulnerability before liability would arise. For the reasons outlined by both the Greens and the Democrats, the government similarly won't support the amendment.

Amendment negatived.

Clause 10 agreed to.

Clause 11 agreed to.

Clause 12.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.22): I move amendment No 1 circulated in my name *[see schedule 2 at page 3089]*. I do have an explanatory statement to the amendments, which has been circulated.

Mr Speaker, amendment No 1 amends clause 12 of the bill, which proposes a new section 31H (1) (a). The amendment places the phrase "factual causation" in brackets

rather than in inverted commas. This amendment is a result of comments from the scrutiny of bills committee.

Amendment agreed to.

Clause 12, as amended, agreed to.

Clause 13.

**MS TUCKER** (11.24): I seek leave to move together amendments 1 and 2 circulated in my name.

Leave granted.

**MS TUCKER**: I move amendments 1 and 2 circulated in my name *[see schedule 3 at page 3092]*.

These first two amendments ensure that personal injury claim procedures do not apply to road transport accidents. The two main areas of no-fault accident insurance are in workers compensation and motor vehicle accidents. There already are satisfactory claims procedures in place through legislation. This bill excludes workers compensation cases from these provisions but specifically includes the motor vehicle injuries, despite the fact that the existing protocol with the only third-party insurance provider, NRMA, is working well.

The issue at the heart of this debate is how much the profit lines of the insurance companies are given a priority over citizens' entitlements, even in situations where there is no evidence to support the position the insurance companies are pushing. While it's entirely understandable, it is still not good enough to change the law because other states have already done so. It may be true that third-party insurance and workers compensation are, on occasion, higher in the ACT than in New South Wales. But the point of these schemes is to look after people in our communities. Every small surrender on this path will be twice as difficult to claw back, and we need to hang on to all the fully funded, no-fault schemes that we have in place.

**MS DUNDAS** (11.25): Mr Speaker, I'll be happy to support these two amendments moved by Ms Tucker. I understand that they exempt third-party motor vehicle claims from the operation of this section, and I agree that the existing scheme governing injuries from motor vehicle accidents is working well enough. As I've stated already, there is no reason to make injured people jump through more legal hoops, unless a compelling reason can be shown. And there is no such reason here.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.26): Mr Speaker, the government won't support these first two amendments in relation to their application to motor vehicle injuries. The position the government adopts is similar to that expressed by Ms Dundas: on advice that we've received, the statutory regulatory scheme is more effective because the firms can't opt out of the voluntary protocol. The existing protocol's not mandatory and not all ACT firms adhere to the protocol.

There are a number of process advantages to the option of the single mandatory scheme for the ACT. The provisions we have are based on the Queensland claims procedures for personal injury, which were modelled on successful, implemented procedures under the Queensland Motor Accident Insurance Act of 1994.

Procedures in the bill provide for full disclosure of all relevant material and facilitate cooperation at an early stage between the parties. And the provisions are ideal for application to motor accident claims. The government won't support the proposals proposed by the Greens.

**MR STEFANIAK** (11.27): Nor will the opposition, for the reasons mentioned by the previous two speakers.

Question put:

> That **Ms Tucker's** amendments Nos 1 and 2 be agreed to.

The Assembly voted—

| Ayes 3 | Noes 12 | |
|---|---|---|
| Mrs Cross | Mr Berry | Mr Pratt |
| Ms Dundas | Mr Corbell | Mr Quinlan |
| Ms Tucker | Mr Cornwell | Mr Smyth |
| | Mrs Dunne | Mr Stanhope |
| | Ms Gallagher | Mr Stefaniak |
| | Mr Hargreaves | Mr Wood |

Question so resolved in the negative.

Amendments negatived.

**MR SPEAKER**: A pair is in operation for Ms MacDonald and Mrs Burke. Are you going to pursue your next three amendments, Ms Tucker?

**MS TUCKER** (11.32): Yes. I seek leave to move amendments 3 to 5 together.

Leave granted.

**MS TUCKER**: I move amendments 3 to 5, as circulated, together *[see schedule 3 at page 3092]*.

These next three amendments go to the question of full and/or early disclosure. Full disclosure, as the bill requires, would mean that every piece of information a claimant has would have to be given to the respondent early on in the process. That will create a tendency for plaintiffs to seek out safe opinions rather than go to a full range of experts, as a contradictory opinion could be used by the defendant against them.

The Law Society has put the view that the full disclosure provisions of the Queensland scheme have resulted in plaintiffs and defendants being at loggerheads with competing experts. It also argues that the broadness of disclosures in this bill will discourage parties from making comprehensive notes and statements for fear of being forced to produce them.

These amendments simply narrow the requirement to the disclosure of documents on which they will rely. They shift the focus from full to early disclosure.

**MS DUNDAS** (11.33): I will also be supporting these amendments, because I do agree that a requirement for full disclosure may lead to a mindset on the part of the plaintiff that they have to think strategically about the medical advice and care they seek, to avoid prejudicing a future claim. We have all encountered unsympathetic doctors at one time or another who have dismissed a genuine symptom that we have described.

It appears that the government's clauses at this point could effectively prevent injured people acting in the best interest of their recovery to health by encouraging excessive caution. Hence I think Ms Tucker's amendments seek to remove that.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.34): Mr Speaker, the government opposes these amendments. The government, in opposing them, is responding to, most certainly, detailed recommendations of the Neave legal process reform group which recommended that all courts move to introduce a whole suite of options relating to the better use of evidence, including requirements to disclose all expert witness reports, with a determination that claims be settled as early as possible.

The whole thrust of the government's approach in this tort law reform exercise has been to facilitate, in the first place, mediation and an avoidance of action; in the second place, an early settlement of claims to avoid expensive litigation. By streamlining processes, streamlining the operation of the courts, we can actually reduce the cost of litigation; we can hold litigation down; and we can, through a more refined, a more efficient and a better operating justice and court system, genuinely attack the cost drivers that have driven at one level the cost of pursuing action up.

That was the recommendation of Professor Neave and her inquiry into legal process form. We've adopted that recommendation; we think it was soundly based; we think that the review that was undertaken by Professor Neave and her group was rigorous; they consulted widely. Certainly it's the case, as Ms Tucker puts, that the Law Society has an objection to what they see as a move away from full disclosure to a determination to seek earlier disclosure. The Law Society's insisting that that in some way disadvantaged plaintiffs. It's not the view of the government, and it's contrary to the intent that we're pursuing in relation to this whole suite of reform.

Members should also note that the major thrust of an earlier major inquiry and report in relation to conduct of litigation in the UK, the Woolf report, which was conducted in 1996, was that litigation should be less adversarial and more cooperative. That's what we're seeking to achieve through this entire reform process—less adversarial litigation, more cooperative litigation. It's noteworthy that Woolf reported—and I think we've all

accepted this; on face value, we accept it as true—that an expectation of openness and cooperation between parties from the outset supported by pre-litigation protocols on disclosure and expert evidence will lead to that more cooperative and less adversarial approach to legislation.

Without this change, the existing cost and delay occasioned by our existing pre-trial process will continue; we won't affect it or adjust it at all. Some of the great issues that are being faced by those pursuing or seeking to pursue timely action for personal injury relate to the cost and delay that are occasioned by all the finagling that goes on before you get your day in court. That's where the delay is and that's where the cost is—the years of delay, the time it takes.

These provisions in the government bill are designed to attack those pre-trial processes head on. To actually turn them around or upside down, as Ms Tucker proposes, will seriously affect one of the major tenets of this whole reform process, but it doesn't address or attack those pre-trial issues.

We go back to what we've currently got: a maintenance of a culture of almost compulsive secrecy. That's how lawyers deal with each other these days; you tell your opponent nothing until you get in court because you might be giving away some advantage. One of the great evils of the system is that lawyers don't tell each other what's going on; they hide it; and then they spring it in court. Of course, the longer you can delay a matter getting to court, the more the lawyers love it; their costs just keep rolling and rolling.

**MR STEFANIAK** (11.38): There's a lot in what the attorney says. I'm aware of the Neave report and the Woolf report in the United Kingdom. Having been involved in a few of these matters, I think there is much to say in terms of supporting what we have here, because I think ultimately it leads to a much fairer sort of situation for everyone.

What is wrong with people disclosing documents earlier? What is wrong with trying to settle a case as soon as possible and as fairly as possible? Proper and full disclosure, with both sides being open and frank rather than trying to gain silly little tactical advantages, is actually far better in terms of advancing the real interests of justice.

I can see why the government has this in this section. I think it also probably ensures more consistency with what the other states are doing as well. I think there is good reason to do it. Having acted for people on both sides of the fence, even to a limited degree in the civil law area here, I think had this been available in a number of cases I was involved in it probably would have led to a much better result for all concerned. Accordingly, we'll be supporting the government's position on this particular lot of amendments.

Question put:

> That **Ms Tucker's** amendments Nos 3 to 5 be agreed to.

The Assembly voted—

| Ayes 3 | Noes 10 | |
|---|---|---|
| Mrs Cross | Mr Berry | Mr Quinlan |
| Ms Dundas | Mr Corbell | Mr Smyth |
| Ms Tucker | Mr Cornwell | Mr Stanhope |
| | Ms Gallagher | Mr Stefaniak |
| | Mr Pratt | Mr Wood |

Question so resolved in the negative.

Amendments negatived.

Clause 13 agreed to.

Clause 14.

**MS TUCKER** (11.43): I move amendment No 6 circulated in my name *[see schedule 3 at page 3092]*. This amendment reinstates the rights of plaintiffs and defendants to bring an expert of their choice to court. The idea of limiting expert witnesses to one appointed by the court would certainly speed up the legal process. The trouble is that the selected expert, in many cases, would de facto become the judge. That is not why we have courts and judges. We might as well have a compensation tribunal with some full-time experts making the decisions. It would be quick but it might not be fair.

The trouble is that there are legitimately different views on illnesses and injuries. RSI springs to mind. Clearly, your case could stand or fall on who the expert was on the day. Furthermore, the bill, as it is written, would stop you calling treating specialists who would have a better idea of the history of the injury or illness.

**MS DUNDAS** (11.44): I will be supporting this amendment and was quite horrified at the original part of the amendment bill put forward by the government in relation to this. The limitation to one medical expert for each medical condition could do a great injustice to a plaintiff or a defendant, as one expert can take a very different view to another expert, and that view may be strongly favourable or not to another party. It is true that the appointed expert also may not be the person with the most information about the plaintiff's injury.

We cannot limit a court process to just one person, who may not have all the information, making these decisions, especially in terms of medical cases where there are quite varying opinions on people's injury, illness or ongoing physical wellbeing.

Some people will put the argument that we need to do this because there will be savings by reducing the number of expert witnesses. As I have said before, justice is often expensive, but expense is not a reason to dispense with justice.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.45): The government opposes the amendment, Mr Speaker. Experts are engaged by plaintiffs and defendants as an integral part of a claims process for both plaintiffs and defendants, both before and after a claim is lodged.

The evidence that an expert might give falls into three broad categories: the medical condition or prospects of rehabilitation of a person; the cognitive, functional or vocational capacity of a person; and the question whether a particular medical treatment amounts to a professional negligence. The evidence is employed to establish or refute claims of the presence of negligence or the quantum of loss. Expert witnesses are a very significant cost driver in litigation and civil claims.

A number of difficulties exist in relation to expert witnesses in Australia and other common law countries like the United Kingdom. Experts are perceived to lack independence from the party that engaged them. They're essentially regarded as no more than hired guns.

Excessive or inappropriate expert reports are obtained by parties; experts sometimes fail to provide reports in the appropriate timeframe; and the appearance of experts in court is problematic. Even a short appearance may require the expert to set aside a number of days. Simply put, there's a widely held view that experts are hired guns that give the evidence they're paid to give.

Most Australian jurisdictions have identified the use of expert witnesses as a significant issue, but strongly entrenched legal interests have strongly opposed proposed reforms. The major exception to that is the United Kingdom. Lord Woolf, the author of civil reforms in the United Kingdom, argued in his access to justice reports that the use of experts was a major problem in the civil justice system.

Expert witnesses significantly increase the cost and complexity of litigation. Expert witnesses are a major source of delay in proceedings. Lord Woolf proposed that there be a single joint expert where possible. In 1996 he said in relation to this issue:

> It was a basic contention of my interim report that two of the major generators of unnecessary cost in civil litigation were uncontrolled discovery and expert evidence. No-one has seriously challenged that contention. In the interim report I made it clear in general terms that I wanted to retain what was best in the English adversarial system.
>
> Any substantial curtailment of the parties' rights to adduce the expert evidence of their choice would certainly be a significant move away from the adversarial tradition. For that reason alone many contributors to the enquiry regarded it as unacceptable. My concern, however, is with access to justice and hence with reductions in cost, delay and complexity.
>
> The argument for the universal application of a full red-blooded adversarial approach is appropriate only if questions of cost and time are put aside. The present system works well for lawyers and judges but ordinary people are kept out of litigation.

In his final report, Lord Woolf continued:

> … I explained that this too was an area where certain excesses needed to be restrained: in particular the cost, especially in smaller cases, and the temptation for parties and their legal advisers to deploy expert witnesses as a party weapon rather than as a source of objective assistance to the court. My recommendation that there should be greater use of a single expert has caused much controversy. In chapter 13 I examine the matter further, but still conclude that there is considerable scope, even within a procedure which will remain essentially adversarial in character, for greater use of a single expert. The development of protocols provides a potential voluntary route to achieving this in many instances. Here, as in some other respects, many of those who have acknowledged the need for change in principle hesitate before the practical implications of that recognition. I fully understand their unease. But this is the kind of choice which has to be made if practical improvements of any significance are to be achieved.

The civil justice reform evaluation issued by the UK Lord Chancellor's Department in August 2002 has evaluated the success of the Lord Woolf reforms, and the assessment of the reforms introduced as a result of Lord Woolf's report is summarised as:

> The use of single joint experts appears to have worked well. It is likely that their use has contributed to a less adversarial culture and helped to achieve earlier settlements.

It's the government's opinion, Mr Speaker, that any attempt to water down this particular reform in this bill today will lead to a half-baked response, a return to the past that will allow the continuance of all the problems inherent in the practice of hiring guns to give evidence that supports your own case. Anybody that's ever been a party to or witness to a case in our courts where witnesses or experts play a major part knows it's essentially a fiction.

One party goes out, and if you've got a big wallet, buys in the most expensive expert that you can buy in. Your opponent, depending on the size of their wallet, goes out and buys the most expensive, biggest, best-known and well-known expert that they can buy in. Guess what? They always have a different opinion. Funny about that!

The claims are that this reform will kill off the adversarial system. I think it's interesting in essence that we find that the Greens and the Democrats are asking for us to bolster the adversarial system, keep that adversarial nature of our legal system going. The major driver of adversariality in courts is expert witnesses, and that's what you're arguing for. You want us to keep it going; keep the hired-guns-at-20-paces mentality that is the major inhibitor of early settlement, fewer opportunities for mediation and settling these sorts of things in a reasonable way.

The United Kingdom has had the benefit of expert witnesses, as proposed here. The most recent assessment of the reform has indicated the worth and value of the reform. It works. And we should take this opportunity to cure this same defect in our present regime of experts.

If we don't, I think it's fair to say that every dollar creamed off by the competing hired medical guns, every dollar lost through delay or dispute, will be a dollar less for plaintiffs and a dollar more for premiums.

**MR STEFANIAK** (11.52): Mr Stanhope has certainly, as he often does, very forcibly put his point of view here on this particular matter, and he is largely right. I don't necessarily know that you go and get the most expensive expert, but you certainly go out and you get an expert who is going to do the best job for your particular case. The other side, doing their job as lawyers do, will go out and get an expert who'll do the best job for their case.

At the end of the day, it probably does become a little bit of a nonsense. I can remember, certainly as a solicitor, trying to find experts who would give the best possible slant to my client's case. You'd be doing the wrong thing by a client if you didn't. Everyone does that.

There is, however, one problem with this, which the Law Society quite correctly did flag. It's not only that solicitors are guilty of getting certain types of experts who have a certain slant, but we do have such things as judges. Judges are human beings, as we see, and they are sometimes known as a good plaintiff judge or a good defence judge. I can certainly name you a very good plaintiff judge in this territory, and I could probably name you one judge whom I'd be a little bit more wary to appear in front of, if I was a plaintiff. The Law Society did make the point about that. What happens if the court has to appoint an expert? If it's a plaintiff judge, plaintiff, you are home and hosed because you're going to probably get a plaintiff expert.

I thought, "Yes, that is a very real problem with another section, the role of the expert, 31ZYA." However, I was very pleased to see the Chief Minister had some subsequent amendments. In his proposed amendment No 2, he inserts a further subsection, which, I understand, is a sort of a modified Boland test, where "the expert must have regard to whether the treatment was in accordance with an opinion widely held by a significant number of respected practitioners in Australia in the relevant field". Because of that amendment I'm prepared, certainly, to support the government in terms of what it's got in this substantive section, 31ZW.

The amendment they're moving next—in relation to a significant number of respected practitioners, the college of surgeons or whatever in any relevant field in Australia— would stop perhaps, in my example, the plaintiff judge appointing a plaintiff expert if parties couldn't agree that that expert could not deviate too far away, if that was the case on the facts, from what a significant number of his or her respected peers, as practitioners in Australia, would do. That, I think, gives us a protection against a single expert not bringing fairness to it.

This is an area we will have to watch pretty carefully, because there still can possibly be a propensity for some injustice here. But I think amendment No 2 on the government's list of amendments will largely go towards stopping that happening. And remember, at any rate, the court only appoints an expert when the parties can't agree. I would hope, as a result of this particular piece of legislation, we'll see a lot more cooperation between the parties, because there's a lot more cooperation being forced between the parties.

It is something that occurred in the criminal law probably 10 or 15 years ago, where you give other people statements. You actually have police records of interview. The prosecution actually started giving statements to the defence and—far from shock, horror, the sky falling in—that actually often speeded up matters in that jurisdiction. Defendants would plead guilty because they thought solicitors would say, "Look, they've got a watertight case against you, pal, you're stuffed."

Similarly now, in the civil jurisdiction, I think there are some sensible amendments actually being made here which will improve the law, which will modernise the law and which will, hopefully, get rid of some of the adversarial aspects that were certainly less than perfect. Accordingly, because the government will be moving its amendment No 2, I think that that should probably cover any real dangers that might exist in relation to what we're discussing now.

We'll obviously monitor it closely but, on that basis, I'm certainly quite happy to support the government in relation to this particular section.

**MS TUCKER** (11.57): Just a quick response: I think, in a way, listening to Mr Stanhope and Mr Stefaniak, they're supporting my amendment; they've made the point very strongly that they see expert witnesses being used to progress a particular position. That's the very point that I'm making: it's obviously possible to have an expert witness disagreeing with another expert witness. When the court appoints an expert witness, in fact in this sort of situation—and this is what is trying to be established—that evidence is absolutely critical, that expert witness is extremely important. It is, I think, a serious reduction in terms of the capacity to find the truth, when you only have one expert witness. We have seen in the UK, where they've done that, terrible miscarriages of justice have occurred. So I think we need to be very, very concerned about this.

**MRS CROSS** (11.58): Mr Speaker, it disturbs me to hear some of the legal jargon that's being used in regard to this amendment by Mr Stanhope and Mr Stefaniak, especially given that some people in this place, such as the Chief Minister, base their reputations on being socially progressive.

It's incredible to me that one would try to limit a democratic process by saying, "Well, no, you can only have one." I'm frankly shocked. I'm not shocked that it would happen from one side of the chamber, but I am shocked that it would happen by those that proclaim to be socially progressive. So I will support Ms Tucker's amendment.

Question put:

> That **Ms Tucker's** amendment No 6 be agreed to.

The Assembly voted—

| Ayes 3 | Noes 10 | |
|---|---|---|
| Mrs Cross | Mr Berry | Mr Quinlan |
| Ms Dundas | Mr Corbell | Mr Smyth |
| Ms Tucker | Mr Cornwell | Mr Stanhope |
| | Ms Gallagher | Mr Stefaniak |
| | Mr Pratt | Mr Wood |

Question so resolved in the negative.

Amendment negatived.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (12.02): I move amendment No 2 circulated in my name *[see schedule 1 at page 3088]*.

Mr Speaker, amendment 2 amends clause 14 of the bill by inserting a fourth subsection to section 31ZYA. The new provision imposes a requirement on an expert medical witness when giving evidence on the issue of whether particular medical treatment amounts to professional negligence. Under section 31ZYA (4) the expert witness must have regard to whether the treatment was in accordance with an opinion widely held by a significant number of respected Australian practitioners in that field. The amendment requires the court appointed expert to take note of peer practice.

I might say, and add, Mr Speaker, for the information of members, that this particular amendment was negotiated by the government with the AMA and is essentially akin to the modified Boland test which the medical profession were seeking as an alternative to the position that the government proposes. The government accepted this as a reasonable accommodation of the opposing views of the government and of the medical profession on essentially the definitions that should apply in relation to this particular area. I commend this particular amendment to the Assembly.

**MR STEFANIAK** (12.04): For the reasons given in my last comments on the last amendment, the opposition will be supporting this amendment. We think it's a very sensible one.

**MS DUNDAS** (12.04): It looks like this amendment is an attempt to patch up the problems of the main provisions of the bill before us, and we think that this attempt is actually unsuccessful. Although it may be helpful and obviously necessary for an expert witness to be required to have regard to generally held views in the relevant medical field, we are still left with the problem of only one medical opinion being given. I think this amendment deserves some support, but it doesn't make me satisfied that the amendment bill before us will actually make the situation better. So even if this amendment is successful, I will not be able to support the clause.

**MS TUCKER** (12.05): The Greens think this amendment is a reasonable concession to the medical profession and their insurers and makes specific reference to accepted medical opinion when it comes to the question of negligence. Arguably an expert would take that into account, but it makes sense to insist that it is so.

Clearly, though, there is the fear and, on occasion, reality of being judged negligent despite following accepted procedure. That fear is significant. At the same time it is important that the issue should not simply be about following accepted procedure, because every situation is different. The point of court cases is to take those individual differences into account. But we will support this amendment.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (12.05): Just on this particular issue of expert witnesses, Mr Speaker: I just want to draw members' attention to the fact, which I might have mentioned in the earlier debate, that the proposal is—and I think it's important that we publicly acknowledge this—that the parties get together and jointly agree on the expert witness. I think, for the sake of balance in the debate that we've had, we need to understand that the proposal is that the parties come together and negotiate on who would be an appropriate expert witness that they would trust to represent their views, to provide the court with an honest and objective analysis of a condition.

This is not saying, "You shall have this expert witness." The proposal set out in section 31ZK is that the parties get together, sit down and agree that this person is an appropriate expert witness to be utilised in this particular case.

In the end there might not be some agreement between the parties and, if that weren't achieved—and one would imagine that it would be in almost every circumstance—if they don't agree, then the court will decide on an expert witness to be nominated by the presidents of the medical colleges of Australia.

This is the process we are proposing here: in the first instance, the parties sit down and agree on an acknowledged expert. If that doesn't work, then the court determines. And you would work desperately to avoid the court determining it because you lose some control. The group of expert witnesses that the court can choose from is a panel nominated by the presidents of the respective colleges.

Question put:

> That **Mr Stanhope's** amendment No 2 be agreed to.

The Assembly voted—

| Ayes 12 | | Noes 1 |
|---|---|---|
| Mr Berry | Mr Quinlan | Mrs Cross |
| Mr Corbell | Mr Smyth | |
| Mr Cornwell | Mr Stanhope | |
| Ms Dundas | Mr Stefaniak | |
| Ms Gallagher | Ms Tucker | |
| Mr Pratt | Mr Wood | |

Question so resolved in the affirmative.

Amendment agreed to.

Question put:

> That clause 14, as amended, be agreed to.

The Assembly voted—

| Ayes 10 | | Noes 3 |
|---|---|---|
| Mr Berry | Mr Quinlan | Mrs Cross |
| Mr Corbell | Mr Smyth | Ms Dundas |
| Mr Cornwell | Mr Stanhope | Ms Tucker |
| Ms Gallagher | Mr Stefaniak | |
| Mr Pratt | Mr Wood | |

Question so resolved in the affirmative.

Clause 14, as amended, agreed to.

Clause 15 to 17, by leave, taken together and agreed to.

Proposed new clause 17A.

**MR STEFANIAK** (12.14): I move amendment No 2 circulated in my name, which inserts a new clause 17A *[see schedule 2 at page 3089]*.

Mr Speaker, this clause introduces a cap in terms of non-economic loss. I heard the Chief Minister grudgingly indicate that, whilst he didn't like caps and thresholds, he was going to be forced into doing that. This cap is actually very much an ACT cap, which I commend to members. Because it appears that we are going to have to have a cap, we might as well have a cap relevant to the ACT.

A cap is actually on damages for non-economic loss, and non-economic loss is defined as pain and suffering; loss of amenities of life; loss of expectation of life; and

disfigurement. It is one of the components in a damages action which is awarded to a successful plaintiff.

There are a lot of arguments over whether you need caps or not. The Law Society— when they saw me they saw everyone else—actually suggested an interesting thing which I'll mention here. Apparently Tasmania has a system of doing something for the catastrophically injured—a combination of something with insurance and Commonwealth funding. If you took those out of the insurance equation, your premiums would drop. That's an interesting idea.

They don't particularly like the idea of a cap, because they think the actual cap is really for those at the very high end. Nevertheless, a cap seems necessary in terms of this particular legislation. We accept that. My cap is actually based on what is the highest award in the ACT, as told to me by the Law Society of the ACT, for non-economic loss. I understand the caps in other jurisdictions, including the Victorian jurisdiction, are similar. I did have discussions with government officers, but they went with this. The maximum amount in a recent case in the ACT for non-economic loss was $300,000; hence the figure of this particular cap.

As is the case, I know, in several other jurisdictions at least, subsection 2 of 38AA enables regulations to be made to ensure indexation of the actual cap. Obviously it would go up with the cost of living, which I think is a fair thing.

Mr Speaker, I commend this particular amendment to the Assembly. We will be going down the track, I think in the September sittings, according to the attorney, of some further amendments to this particular legislation, and I would commend to you this cap which is specific to the ACT and does not apply to other jurisdictions.

**MS DUNDAS** (12.18): This amendment isn't as troubling as amendment No 1 from Mr Stefaniak, but it is still quite disturbing. I have trouble seeing how it will serve any great purpose for our justice system. Mr Stefaniak informs us that $300,000 is the maximum amount awarded to a plaintiff for non-economic loss by an ACT court. I understand that Mr Stefaniak is concerned about escalating damages awards, but I believe that appropriate damages should be considered on a case-by-case basis.

It may be that an ACT court has not yet seen the worst possible example of human suffering, and a higher damages award may be appropriate. I do not believe that capping payouts is desirable or necessary. This is another measure—and I was also concerned to hear in the media the other day that Mr Stanhope thinks that this is an idea he will pursue—that is purely to satisfy insurers at the expense of justice. So I cannot support it.

**MRS CROSS** (12.19): I would like to echo the sentiments of Ms Dundas, so I will not be supporting this amendment. I'd like to know which magic formula was used, other than probably looking at a list of claims and picking the biggest one. It does not take into account, as Ms Dundas said, the fact that there could be a more serious case in the future. I find it a great concern that we're applying this mechanism to address what may be a more serious issue in the future, and this certainly is not going to address the insurance crisis.

If members of this chamber think that this is a way to get around addressing the insurance crisis, then they've got Buckley's. I'm very concerned that there are members of this place with a supposedly detailed work background that would actually do this.

Mr Speaker, have these people actually spoken to victims of accidents that have actually suffered serious consequences and serious injuries that affect them for the rest of their life? I doubt it. And if they have, they've probably only spoken to one or two. Well, let me tell you: this is not the answer to addressing the insurance crisis. You are going about this in the wrong way, and I'm very concerned that members of this place, particularly with a legal background, would go about arbitrarily deciding on a figure—the magic figure. It's like deciding on a magic this and a magic that. How you've come up with it, God knows.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (12.20): The government won't be supporting the amendment, Mr Speaker. I might just add by way of digression: I wait with bated breath Mrs Cross' proposals for resolving the insurance crisis. I wait with bated breath a single proposal for dealing with this incredibly difficult and complex issue that is having such a profound effect on our very way of life. It's a major problem for the nation and for communities. The package that the government's delivered today is a very responsible response to the issues that we collectively face in relation to the non-availability of public liability and medical indemnity insurance.

In relation to the proposal that Mr Stefaniak makes today: the government, as I indicated during the week, has accepted reluctantly, most reluctantly, that we legislate for thresholds and caps. I was very open about the reasons for that. I've resisted them strenuously for the last two years.

Mr Quinlan, as Treasurer, at all insurance and treasury council meetings, has resisted thresholds and caps strenuously. I, as Minister for Health, and Mr Corbell, as Minister for Health, have at health ministerial councils resisted thresholds and caps. In fact, we are the jurisdiction—the only jurisdiction, as it transpires—that fought and fought and argued again and again against thresholds and caps as a winding back, a diminution of the rights of individuals to pursue action in circumstances where they have been injured or suffered loss as a result of the negligence or incompetence of others.

These are difficult and fundamental issues around the rights of individuals, and we have fought long and hard—to the point where we were the only jurisdiction left standing. Every other state and territory in Australia flopped. They fell over. At the end of the day we found ourselves in the ditch alone—just the ACT hanging out, continuing to argue the position of principle. We fought long and hard and, as it transpires, unsuccessfully—to a point where we measured, as we do in so much of what we do in this place, the rights of a group of individuals potentially affected, particularly by the actions of doctors, against a greater public interest, the interest of the community as a whole. This is when decision making and policy get incredibly difficult—the rights of the individual as against the rights or the greater interests of the community as a whole.

We face, without a doubt, as a result of the decisions we have previously taken in relation to thresholds and caps, a circumstance where premiums in the ACT for GPs, for

specialists, would be ramped up as against the premiums that would be charged in New South Wales—an intolerable situation in terms of those that practise here in the ACT. Just imagine it; just put yourselves in the situation of doctors operating in this place. We, the government, were seeking to ensure that the public health services available to people of Canberra were maintained, weren't disrupted. Just sort of bargain this off: the imposition of thresholds, the imposition of a cap, against wholesale disruption of, particularly, our public health system, particularly the operations of obstetricians and anaesthetists; our capacity to attract to our hospitals and to our public health system doctors from interstate; our capacity to retain those doctors that we currently have.

What if UMP carry through on their statement—and it was a threat; they might say they were simply advising us of their future business decisions or directions, but it was a threat—"If you don't go this extra yard in your legislation, we will price you out"? It's easy to adopt a high moral position on this. We won't succumb to that sort of bullying; we won't succumb to that sort of business approach. You take the risk; you take the risk of your doctors going on strike on 31 December; you take the risk of your GPs simply bailing out and not being replaced; you take the risk of no anaesthetists turning up in the holiday period. Then you stand up in this community and say, "Well, for the sake of the principle, we'll risk that. We'll actually allow that to occur. We won't take the interests of the community to heart, and we won't respond on behalf of the whole community."

Having said that, we're doing some detailed analysis of claims history in the ACT. The courts, both the Supreme Court and the Magistrates Court, have been asked now to produce some of the data that we need to make a considered decision or conclusion around thresholds and caps. I think we do need to do some work.

It's interesting to note, for instance—and members would be interested to know—that over the last three years we've averaged, in filings in the Supreme Court, between 30 and 40 filings a year. These are claims against medical practitioners for alleged negligence in the delivery of medical services. There's been very little variation. Three people a month in the ACT sue their doctor through the Supreme Court. We're seeking further information in relation to filings in the Magistrates Court. It's difficult and complex to extract that information.

It will be interesting to know who is suing; what they're suing for; what the quantum of claims that they're making is; and, of course, interestingly, how many are settled before they get to court. This is the sort of information that we don't have and the sort of information that we need.

As I've said, we will move to thresholds and caps. The government will introduce—at this stage, I'm hoping in September, when we come back in four or five weeks time—a separate amendment to this bill. I'm standing up and opposing it today. It may be that in four weeks time, after doing some further analysis, after we discuss with the insurance industry around Australia what they will deliver to us for this concession, I won't be.

This is one of the great difficulties we have: most of us are very cynical about any intention that the insurance industry has to deliver any benefits to communities for these major tort law reform exercises that are going on in every state.

We want an opportunity over this next month to enter into some detailed discussions with the insurance industry that operates here in the ACT. We'd like to talk to the AMA about some other aspects of other proposals that we have in relation to that—for instance, in relation to full and detailed accounting by doctors of all adverse incidents that do occur. I think health ministers and heads of health departments are working currently on proposals in relation to that.

I believe that it would be appropriate for us to consider legislating a circumstance where we do insist that there be that formal mandatory reporting in relation to all adverse incidents and that would, of course, be a quid pro quo to the steps that we take in relation to the imposition of thresholds and caps, but we need some time. On that basis, the government will oppose this particular proposal for a cap today.

We would like to look at other models; we would like to enter into some detailed conversations with the insurance industry; we want to talk to the AMA; we want to look at other amendments that we might move in association with a move to a threshold or a cap to ensure that this is not just a gift to insurance companies to further enhance the very, very attractive profits that they've already achieved over this last year. But certainly it's not something that we've come to willingly; everybody knows that.

There are a whole range of issues. We did, in our first round of reforms, of course, as members know, cap economic loss at three times weekly earnings. So there is a cap in the legislation as it stands in relation to economic loss of three times average weekly earnings. But we didn't at that time, as you know, proceed, as all other jurisdictions had, to extend that cap to general damages—essentially, those issues, as Mr Stefaniak explained in his presentation, that go to pain and suffering and that do traditionally fall within the parameters of general damages.

Certainly it's a very difficult and problematic area of law—the extent to which different individuals do have different pain thresholds; we do respond differently to pain and to trauma; and we do suffer differently. Some of us have a capacity to simply accept pain and move on, but it doesn't, though, bear us down; we have a capacity to adapt, whereas others don't. We acknowledge that. Some people don't have the same capacity or the adaptability. The common law has recognised that through this differential approach that's applied to issues around pain and suffering.

These are difficult issues, and the government will now grasp with thresholds. But we want to do it in a scientific and clinical way. We'll look for that extra time to do that.

*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.**

## Ministerial arrangements

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs): For the information of members, my colleague Mr Corbell, the Minister for Health, has an engagement which requires him to depart

question time at 3.15 pm. If there are questions directed to Mr Corbell in any of his capacities, I would suggest to members that they may wish to ask those questions before 3.15 pm; otherwise I will take them.

## Questions without notice

### Hospital waiting lists

**MR SMYTH**: Mr Speaker, to comply: my question is for the Minister for Health. Mr Corbell, I am in receipt of a letter from a leading Canberra orthopaedic surgeon whom I will not name as it may identify the patient concerned. I understand that the minister may also have a copy of the letter. The letter describes the plight of a patient needing a reconstruction who is classified as category 2, with a priority marking, at the Calvary Hospital. As at 4 August 2003, the date of the letter, this patient has been waiting since 11 April 2002, a wait of 480 days. The letter goes on to say that the surgeon's waiting time for his patients on his list at Calvary is 2½ years, that is, 902 days.

Minister, the ACT Health website, which has figures for February, lists category 2 patients as waiting an average of 136 days. Minister, not only is the website hopelessly out of date, it is clearly misleading. When will you start supplying the people of Canberra with up-to-date and accurate waiting time information?

**MR CORBELL**: Mr Speaker, I do it every month. I know because Mr Smyth responds to it every month; so, yes. I understand the website is in the process of being updated. But Mr Smyth would be aware that the government releases waiting list information every month, and I know he is aware of that because he puts out a press release every month as well.

But while we are talking about waiting lists and access to elective surgery, it is worth making the point that Mr Smyth seems to be wanting to use access to elective surgery as a key indicator of the performance of the ACT public health system. Mr Speaker, I would like to read a quote to you which I think puts the issue in some perspective:

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

I couldn't agree more. Indeed, I just wonder whether Mr Smyth agreed with it when he was in government because they're exactly the words of his health minister, Mr Michael Moore, when Mr Smyth was a minister of the last ACT government.

**MR SMYTH**: A supplementary question, Mr Speaker. Minister, I accept what you've said from Mr Moore, but Mr Moore also said that waiting lists were such a measure as well, although he preferred to use the wait times. But why do you persist in hiding the true state of elective surgery in Canberra behind spurious rhetoric, as we have just heard, Orwellian doublespeak and misinformation?

**MR CORBELL**: All that Mr Smyth says is simply untrue, Mr Speaker. Is he seriously claiming that I do not release the figures for waiting lists every month? Is that what Mr Smyth is claiming? If he is claiming that, then he is simply wrong, because the figures are released every month. I challenge any member of this place to point out to me where they haven't been released on a monthly basis. Because they are released on a monthly basis. Every consecutive month there is a new waiting list released.

It sounds to me, Mr Speaker, like an untruth, but I would suggest otherwise. It sounds to me like an untruth, but maybe that's something Mr Smyth may be conscious of.

**Mr Smyth**: Have you just misled the Assembly?

**Mr Hargreaves**: On a point of order, Mr Speaker: the Leader of the Opposition just asked the minister the question did he just mislead the Assembly. I ask that he withdraw the word "mislead".

**MR SPEAKER**: I didn't hear that.

**Mr Smyth**: I didn't actually say that. I didn't say, "You have misled the Assembly." I asked the rhetorical question: "Have you mislead the Assembly?" The minister said he releases the figures every month.

**MR SPEAKER**: Order! There is a clear imputation there, and I want you to withdraw it.

**Mr Smyth**: I am happy to withdraw it.

**MR SPEAKER**: Before I call Ms MacDonald, I am advised that Ms Ninette Jenet, who is 96, is in the gallery. She is Mr Cross' Red Cross grandmother. Welcome.

## ACTION bus fares

**MS MacDONALD**: My question is to the Minister for Planning, Mr Corbell. Minister, it has been 12 months since the introduction of ACTION's single zone fare system. Would the minister indicate to the Assembly the results of this initiative?

**MR CORBELL**: I thank Ms MacDonald for the question. Indeed, the one fare anywhere scheme was an election commitment of this government and is one about which I am very pleased to provide information to the Assembly. Mr Speaker, you will recall that, when Labor, then in opposition, proposed the introduction of one fare anywhere, the previous government claimed that it was going to be a complete flop. They said it was pointless, that we did not need it, and that it was not appropriate. "Just do not do it, Labor Party"—that is what they said, Mr Speaker.

I am very pleased to advise that, one year later—so we have seen a full year now of the operation of one fare anywhere—we have seen a 9 per cent increase in adult patronage over that period of time. Because of our investment in public transport, which is $46.8 million more than the previous government's, we are seeing commuters choosing to leave their vehicles at home and catch the bus. That is because we have halved the amount that it costs to cross a zone, because we do not have zones any more, and we

have seen a 9 per cent increase in the level of adult patronage. That speaks volumes about the success of one fare anywhere—more Canberrans choosing to use public transport.

In total, there have been 16.34 million passenger boardings in 2002-2003, compared with only 15,789,000 for the previous year, a very significant increase in passenger boardings. That is an increase of over half a million boardings in the past year. By any measure, that has to be seen as a significant step forward. Adult passenger boardings increased by 9.17 per cent, which is approximately 400,000 more boardings, 400,000 more occasions on which an adult is getting on the bus in Canberra as a result of Labor's one fare anywhere.

I am just wondering whether the Liberals are going to rethink this now and think that maybe it was a good idea after all, because we have seen an increase in patronage. Not only have there been an extra 400,000 adult boardings over the past year, Mr Speaker, but we have seen increases in concessions and in student travel: an extra 108,000 boardings of concession passengers and even student travel has gone up with an extra 33,000 boardings. We are not even giving them free tickets, Mr Speaker, but we are still seeing an increase in the number of student boardings.

Overall, it is a very strong result for ACTION in relation to boardings. However, the success is not just in those areas citywide. It has also occurred in individual areas. Gungahlin has seen a 24 per cent increase in boardings, Belconnen has seen a 2.85 per cent increase, or another 34,000 passenger boardings, and I am sure that Ms MacDonald will be interested to know that there has been an increase of over 2 per cent in boardings in Tuggeranong, an extra 31,000 passenger boardings. That is the success of one fare anywhere—increased boardings right across the city.

However, it is not just because of one fare anywhere. It is also about improving services and the government has improved services: an extra 200 bus services into Gungahlin as well as extra services in the Tuggeranong Valley, particularly in the areas of Conder, Banks and Gordon, and between Gungahlin and the Russell Park area in the centre of the city. That is the result of one fare anywhere.

But wait, Mr Speaker, there is more. We are also seeing projected fare revenue increases, along with patronage. We are getting more fare revenue and better cost recovery as a result of this increase in boardings. ACTION's total revenue has increased by 8.8 per cent from $14.435 million to $15.712 million, or an extra $1.2 million. Boardings are up, the number of services is increasing and revenue is up, Mr Speaker. That is the success of one fare anywhere. It is a pity that the Liberals did not have the foresight the government had when it came to introducing this very important measure to improve public transport in the ACT.

**MS MacDONALD**: Minister, considering this excellent news—more buses and more passengers—do you find it surprising that members of this place continue to talk down our public transport system?

**MR CORBELL**: Yes, I do, because despite Labor's investment, despite the extra and increased patronage, extra funding—

**Mrs Dunne**: Point of order, Mr Speaker.

**MR SPEAKER**: Mrs Dunne, point of order.

**Mrs Dunne**: I think Ms MacDonald is asking the minister for an expression of opinion.

**Mr Hargreaves**: On the point of order, Mr Speaker, whether or not the minister was surprised is a simple fact. It is not an opinion. There is no point of order.

**MR SPEAKER**: Ms MacDonald would you repeat the supplementary?

**Mr Cornwell**: Has Mr Hargreaves taken over your job, sir?

**MR SPEAKER**: No, I can manage.

**MS MacDONALD**: I would be happy to rephrase the question.

**Mr Smyth**: That is an admission that it is out of order.

**MS MacDONALD**: No.

**MR SPEAKER**: Order. You are not entitled to ask for an opinion. Would you repeat the question for me, please.

**MS MacDONALD**: Okay. The question was: does the minister find it surprising that members of this place continue to talk down the public transport system?

**MR SPEAKER**: I think the supplementary question is in order.

**MR CORBELL**: The Liberals must feel a bit sore on this point, because this is the system that they canned before the last election. They said that it would not do anything for public transport in Canberra. I note that the shadow minister is stunned into silence when it comes to these figures.

Despite the increase in patronage, the increase in services and the increases in revenue, there are still unfortunately some members of this Assembly who choose to use ACTION as a political whipping boy. A brochure has been distributed by Ms Dundas which claims that ACTION is unsafe, is too expensive and does not provide enough services and that its passengers are exposed to the elements. She is claiming that ACTION's patronage is falling. Indeed, she is wrong. Patronage is increasing.

Indeed, at the same time that total ACTION patronage increased by over 3 per cent, national public transport patronage has fallen by a similar percentile, so we are bucking the national trend when it comes to public transport patronage.

Ms Dundas is also claiming that ACTION's operational funding has been cut. Again, Mr Speaker, that is wrong. Since our election, Labor has increased the government's capital and recurrent investment in ACTION by $46.8 million, the largest investment in public transport in the past decade. That includes and $18 million increase in the funding base for ACTION and $8.8 million for the single zone fare system. How can Ms Dundas go out there and bag ACTION and say that there has been a decrease in the level of funding

when she is simply wrong. She should apologise to those members of the community to whom she made those claims.

This financial year, ACTION no longer has a debt to the Commonwealth government, which previously represented around a $2 million annual repayment, and has made efficiencies to ensure that it is as efficient as other public sector transport providers. However, I think Ms Dundas thinks that, because ACTION is no longer paying off the loan, that somehow amounts to a cut. She is simply wrong. She knew she was wrong when this was raised in the Estimates Committee but she is still out there in the community saying that there is a decrease in funding to ACTION.

In her brochure, Ms Dundas lists improvements that she wants to make to ACTION. I think she has been reading my media releases because her improvements comprised initiatives that the government has already announced. I think Ms Dundas should reflect on that a bit more.

Wait, there is more, Mr Speaker.

**MR SPEAKER**: Order.

**MR CORBELL**: Ms Dundas is not only claiming credit for the government's transport initiatives, but she is also claiming credit for a number of other initiatives, including the Kippax library, $2 million in this year's budget; mental health workers, over $1 million in this year's budget; and the government's discrimination reforms. Mr Speaker, if you can't beat 'em, join 'em.

**MR SPEAKER**: Order! Before I give the call for the next question, I wish to inform members of the presence in the gallery of Mr Matthew Brown MP, chairman of the Standing Committee on Public Accounts of the Legislative Assembly of New South Wales, Mr Paul McLeay MP, vice chairman of the committee, and Mr David Monk, secretary of the committee. I welcome you to the Assembly.

## Bushfires—declaration of state of emergency

**MRS CROSS**: My question is to the Chief Minister, Mr Stanhope. Minister, on Tuesday you mentioned that you, the head of emergency services, the head of the AFP and the head of your department sat down and discussed the issues regarding the bushfires and their management on the morning of Saturday, 18 January. In fact, I will quote your words:

> I made that decision on the basis of advice tendered to me by Mr Robert Tonkin, Mr Tim Keady and Mr Mike Castle in company with Mr John Murray and Mr Peter Lucas-Smith. I sought explicit advice from them.

All the indications at that time were that Canberrans would be facing a grave situation. I have read through the many documents that have been provided with the McLeod report. Chief Minister, I am curious to know why, given the gravity of the situation—you cannot deny that it was obvious that the outlook was bleak, even if the best-case scenario had occurred—you did not declare a state of emergency until 2.45 pm. I understand that the

AFP had information as early as 9.00 am that a state of emergency should be advised to residents.

Chief Minister, as the elected leader of the ACT community, why did you not declare a state of emergency earlier?

**MR STANHOPE**: That is an interesting question. Why don't I declare one today? To what end was I to declare a state of emergency? What was it designed to achieve?

**Mrs Cross**: To save lives.

**MR STANHOPE**: No, that is not what it was designed—

**MR SPEAKER**: Order, members! The Chief Minister has the floor.

**MR STANHOPE**: I think that we need to have some explanation in relation to that. I think we need to look at what it is that the act actually requires and what it seeks to achieve. As I have explained before in relation to this issue, the suggestion is that there would be some advantage in declaring a state of emergency, something that has never been done before in the ACT and is rarely done in other jurisdictions. For instance, no state of emergency has been declared in New South Wales in relation to any bushfire event in that state in its history, as far as I am aware.

We need to look at this matter in some context. We need to look at it in terms of the legislative impact and what we would seek to achieve by the declaration of a state of emergency. Why do it in the first place? Why, in the face of the very significant fires that New South Wales has faced from time to time, have states of emergency not been declared there? What is it that we seek to achieve and what is it that was sought to be achieved through the declaration of a state of emergency?

Essentially, the advice that I received, which was not put to me until after 2.00 pm on Saturday, the 18th, was that there may be circumstances—and it was advice essentially being proffered by the ACT police—where some people would flatly refuse to leave their residences, even in the face of the firestorm that we experienced. It was the view of the ACT police at the time that in circumstances where a resident whose house was facing the firestorm, for whatever reason, refused absolutely and obdurately to evacuate, the police might need additional powers over and above those which they in any event possessed, essentially, to arrest those people, to take them into custody and to move them under duress out of their homes.

That was the issue that was discussed and that was the issue at the heart of the advice that I took and acted on. It was that in circumstances where people simply point-blank refused police advice, emergency services personnel advice or Rural Fire Service advice that their lives were potentially at risk, that they were in danger of their houses burning and their being trapped and dying, the police should have the capacity to make the decision on their behalf and forcibly remove them from their homes.

That was the advice I received and that was the basis on which I made the decision. I refer all members—I referred to this on Tuesday—to the McLeod report discussion on this issue. It is one of the issues that we will look at in a long and hard way in our review

of that piece of legislation—whether the arrangements we have for the declaration of a state of emergency are appropriate and whether they fulfil our requirements.

Mr McLeod, in his report, suggests a significant serious downside. He makes two points, essentially, in relation to the declaration of a state of emergency. In the first place, in an environment in which the level of warnings may not have been what we would have hoped for, the declaration of a state of emergency had the effect very dramatically at that late hour of concentrating people's attention and minds on the gravity of the situation.

But he weighed against that, and Mr McLeod points to this in his report. I would ask members to read it. He points to the declaration of a state of emergency then perhaps involving the police in terms of their view of the appropriate message or response to give to the emergency, and they entertained or actually pursued a policy of calling for evacuations in circumstances where they upset people. I think everybody has had these conversations or discussions with affected residents. Many of them complained after the event and continue to complain that much of the confusion and frustration that they faced and suffered was on this question of whether to stay or evacuate.

The messages that had been broadcast up to that time by the Emergency Services Bureau were the standard Australian firefighting authority protocol that if you believe you have the wherewithal, that you have taken appropriate precautions, if you have confidence in your fitness and your ability, if you have taken all the steps and you know you have the strength, you know that you can face the disaster, you can face the fire, then stay and protect your property. That message was being broadcast.

The attitude adopted by many police was "evacuate at all costs". We have all had representations from residents of Weston Creek and Chapman saying that they were seriously upset at the directions—

**Mr Smyth**: At the directions of the fire authorities.

**MR STANHOPE**: No, at the directions they were given by police to evacuate, no matter what.

**Mr Smyth**: The police were told by the fire authorities to evacuate them.

**MR STANHOPE**: No, they were not. You are not right there. The difficulty with this ongoing debate is that Mr Smyth thinks that the police were directed by the fire authorities to direct evacuations. They were not, because at that stage Mr Murray was the Territory Controller.

**Mr Smyth**: On the ground and in the suburbs.

**MR STANHOPE**: A part of the problem we have is these impressions, interpretations or myths that do not go to the facts. That was the situation being faced at the time. But the point I was making is that Mr McLeod makes, I think, an interesting observation in relation to this matter that there was a downside to the declaration of a state of emergency, that perhaps it created confusion rather than resolving it. It is a real issue for us that, in the circumstances, the declaration of a state of emergency to some extent created some confusion.

But you need to go back to the fundamental point here: what was the purpose, what was to be achieved, in declaring a state of emergency? We created a Territory Controller and we suggested to the people of Canberra that it certainly was a very dramatic and alarming circumstance that we faced. At the heart of it and the nub of it within the terms of the advice I received, I think the one and only significant point that was put to me on the day to justify a declaration of a state of emergency was the issue of ensuring that the ACT police had the full range of eviction powers they sought.

**MR SPEAKER**: Do you have a supplementary question, Mrs Cross?

**MRS CROSS**: Yes, thank you, Mr Speaker. I nearly fell asleep with that. Chief Minister, do you understand the significance of a state of emergency? If so, what is the real reason you did not make the decision to call a state of emergency at 9.00 am, giving residents an opportunity to prepare for the imminent Armageddon? I say that given the flippant comment in the way you started answering the first part of the question.

**Mrs Dunne**: Because he was having coffee.

**MR STANHOPE**: Mrs Dunne interjects that I did not declare a state of emergency because I was having a cup of coffee.

**MR SPEAKER**: Mrs Dunne's interjection was disorderly.

**MR STANHOPE**: It was more than disorderly, actually. It was extremely ventilative, it was nasty, it was vicious and it was typical of what we expect from Mrs Dunne.

**MR SPEAKER**: Order! Responding to it is disorderly as well. Just deal with the supplementary question asked of you.

**MR STANHOPE**: I will, Mr Speaker. I cannot answer that question. Why did I not declare a state of emergency at 9.00 am? Why did I not declare one at 10.00 am? Why did I not declare one at midnight of the 17th?

**Mrs Cross**: You were advised in the morning. Why didn't you do it in the morning?

**MR STANHOPE**: I was not advised—

**MR SPEAKER**: Order, Mrs Cross!

**MR STANHOPE**: Let's clear up this myth. A few months ago, the ABC broadcast on its news that I had received advice, I think they said, late in the morning to declare a state of emergency and I had rejected the suggestion. I rang the manager, or my staff did, of the ABC and suggested that if they did not broadcast a retraction I would sue them, because that was an outrageous defamation and I will sue anybody now that says it. The ABC, acknowledging that it was an outrageous defamation, did broadcast at the start of the news next day their retraction.

I know that this was an issue of some interest to *Stateline*—I think it was *Stateline*, essentially; it was ABC news and *Stateline*. ABC news picked it up and ran it. It is false;

it is a lie. I asked them to retract and they did, which was good of them. *Stateline* were the people. They dropped my name off it. But on the day that ABC news broadcast the retraction, *Stateline* ran it. This is the *Stateline* we all know and love; the poor man's *60 Minutes*, the intellectual *Big Brother*. But *Stateline* persisted with it, without my name, just dropping it there that the recommendation was made to declare a state of emergency later in the morning.

They have now, I understand, picked on the time of 12.20, which really is quite intriguing. I had no conversations with anybody associated with the Emergency Services Bureau before 12.20. I am not quite sure at what stage I did have my first conversation with the Emergency Services Bureau. It was certainly after that and it certainly was not until 2 o'clock, as I have previous indicated, that a meeting was convened which was attended, as I say, by the head of the Chief Minister's Department, the head of JACS, the head of the Emergency Services Bureau, the ACT Chief Police Officer and others at which there was a discussion around the pros and cons of declaring a state of emergency, the result of which was that between 2.30 and 2.40 the decision was made and acted on to declare a state of emergency.

As to the question of why I did not declare a state of emergency at 9 o'clock, the obvious response in a way is: why would I have declared a state of emergency at 9 o'clock? To what end? What would it have sought to achieve and on what basis would I just wake up on Saturday morning and think, "What a good day to declare a state of emergency?" Why would I do that?

**Mr Smyth**: You only had to look outside your window.

**MR STANHOPE**: Oh, I only had to look outside my window when I woke up and I would have thought, "Gee, what a good day for a state of emergency!" This is arrant nonsense in the extreme.

**Mrs Cross**: It is not nonsense when four people died.

**MR SPEAKER**: Order! I am not going to put up with interjections. I have made that clear. Members will have to restrain themselves, otherwise we will get into a situation in which members are not representing their constituents properly. The Chief Minister has been asked a question. He should be allowed to answer it in silence.

**MR STANHOPE**: I will conclude with this remark, just to make the point in relation to this nonsense: I do not know whether Mrs Cross knows just how offensive that last interjection of hers was; just how offensive it is to suggest that the fact that I did not declare a state of emergency at 9 o'clock, when it had not been suggested to me, had not entered my mind, had no real purpose, caused the death of four people. That Mrs Cross sits there and dares to suggest that I have some culpability in the deaths of four Canberrans is the most appalling and awful thing I have heard in this Assembly in my years in it.

**Mrs Cross**: Don't twist things. Why don't you get rid of the people responsible?

**MR SPEAKER**: Order!

**MR STANHOPE**: It is a reflection of the depths to which some will descend to score miserly, appalling political points in this debate.

**Mrs Cross**: What nonsense.

**MR SPEAKER**: Mrs Cross, please desist from making further interjections. I remind you of standing order 202 and would encourage you to read it.

## Street lighting

**MR CORNWELL**: Mr question to the Treasurer is in relation to an outage of all—I repeat "all"—overhead lights in Leane Street Hughes since last Friday, 15 August, and which have not yet been repaired by Actew. Upon contacting Actew, a constituent concerned about safety was told that a waiting time of eight days was the normal period for these repairs. It is a good thing it was not the light on the hill, isn't it? Treasurer, could you please confirm that eight days is the standard period for these types of repairs; and, if so, when the outage of such lights poses a significant danger to pedestrians and motorists alike, why should this be an acceptable response time?

**MR QUINLAN**: Thank you for the question, Mr Cornwell. Off the top of my head, I cannot confirm or deny the period or the veracity of what was communicated to the particular constituent. So that is a question that I will have to take on notice. I would suggest that if you are asking questions like this, some notice would be appropriate because obviously a minister cannot know that level of minutia across all of the agencies under our purview.

**MR CORNWELL**: Mr Speaker, I ask a supplementary question. Treasurer, is the government indemnified across the ACT against any injury or damage to person or property where it can be shown that the same was caused directly by poor visibility due to such a lighting failure, whether it is in Leane Street, Hughes or anywhere else in the territory?

**MR QUINLAN**: Again, I would have to take that on notice but I would very much doubt that we had a public liability policy that would incorporate—

**MR SPEAKER**: I think it is a request for you to offer a legal opinion and to that extent the question is out of order, so you can resume your seat.

**Mr Smyth**: On a point of order, Mr Speaker. The question clearly states: is the government indemnified against injury or damage?

**MR SPEAKER**: I think it went to the question of public liability.

**Mr Smyth**: No. The supplementary to the Treasurer was: is the government indemnified against any injury or damage? It is a question for—

**MR SPEAKER**: It assumes that it has a liability in it.

**Mr Cornwell**: I would be happy if the Treasurer took it on notice, Mr Speaker.

## Housing—rents

**MR HARGREAVES**: My question is directed to the Minister for Disability, Housing and Community Services. I noticed in today's *Canberra Times* an article about an increase in the rents charged by ACT Housing to its tenants. Why have the rents increased? What is the minister doing to ensure that those increases do not impact adversely on those on low incomes in our community?

**MR WOOD**: This year, as in other years, public housing rents will increase on 19 October by an average of 11.7 per cent. That 11.7 per cent increase is an average; so some people will experience lower increases, some people will experience higher increases and some people will not experience any changes. A small number of people might even have their rents reduced. The government has advised all ACT Housing tenants how those changes will impact on them.

I believe that the majority of ACT Housing tenants will receive that advice today. I am sure that all members know that, unlike renters in the private sector, public housing tenants have the benefit of never having to pay more than 25 per cent of their total gross household income in rent. I encourage any tenants who are currently paying full market rent and who believe that they will now be paying more than 25 per cent of their gross household income in rent to apply immediately for a rental rebate.

This latest inevitable increase is in accordance with the Housing Assistance Act, which requires that public housing rents be reviewed annually to keep them in line with the private market. That is what is being done. Last year, the same circumstances saw a rental increase of 18 per cent and in the previous year there was a rental increase, on average, of 9.8 per cent. As is always the case, this year's changes were made following independent valuations that determined the private rental market in individual suburbs and assessed public housing rents in the light of the age and condition of individual properties.

This fairly steep increase reflects one of the downsides of the rapidly increasing price of houses and, therefore, of rents in the ACT. These changes mean that the rent for an average three-bedroom house will rise from $224 to $250 and, for a two-bedroom flat, from $180 to $200. However, I emphasise that the overwhelming majority of tenants—84 per cent of tenants—will not be affected at all because they receive the rental rebate that caps their rent at 25 per cent of their household income. Approximately 9,400 public housing tenants receive this rebate, while 1,800 tenants pay full market rent.

Last financial year the ACT government provided more than $51 million in rental rebate subsidies to public housing tenants. As I mentioned earlier, people paying full market rent could find themselves eligible for a rebate if their revised rental exceeds 25 per cent of their household income. People who believe that they are now entitled to a rebate or who believe that the new market rental is incorrect should contact ACT Housing. All members would be aware that the rental market remains tight and that private rents are high. In fact, in many cases private rents in Canberra are higher than the rents for similar properties in comparable areas of Sydney.

## CountryLink services

**MRS DUNNE**: My question is directed to the Minister for Health and Minister for Planning, in his capacity as minister responsible for transport. I refer to the deplorable state of affairs that resulted in the passenger train service linking Sydney and Canberra being abruptly withdrawn. Does the minister agree that Canberra has been unfairly singled out as a result of this action?

Was the minister consulted by his Labor Party colleagues in New South Wales before that decision was taken? If so, did he concur with the views that were expressed? If the minister was not consulted, did he protest? What action has the minister taken to reverse this studied insult to Canberra and the surrounding region? Will the minister advise members when those services will be restored?

**MR CORBELL**: I am not responsible for train services in the ACT.

**MRS DUNNE**: I ask a supplementary question. Is the minister afraid to take on his Labor mate, Michael Costa, over this issue?

**MR CORBELL**: No.

## Community housing project

**MS TUCKER**: My question is to Minister Wood as minister for housing. Minister, in this year's budget, $3 million was allocated for innovations in community housing. Several small-scale—that is, grassroots groups—developed models. The minister said about this project, in this place on 3 April this year, that the release of the $3 million would "I think have some impact in that sector"—meaning the community housing sector.

I understand that, despite the large amount of work that went into developing innovative projects as ideas, as yet no payments have been made for implementing the innovative projects. I have heard that part of the problem is that there is no structure or process in place for land to be made available to those projects. Minister, what barriers are there to these projects going ahead to the stage of providing new social housing? What is the government doing to overcome those barriers?

**MR WOOD**: The $3 million would refer to the outcome from last year, which was allocated fairly late in the piece. It is yet to be decided where the further money allocated this year is to be disbursed. As to barriers, I would have thought those applications carry all the detail of what was proposed. I think I heard you say there was a problem with acquiring land.

I am not aware of any difficulties there. I am not aware of any barriers. I have heard no reports of that nature, other than what you have raised with me today. I will certainly look at that. I had expected that, once that money had been allocated earlier in the year, those projects would move ahead quite comfortably. I will take on all the details you wish to provide to see if those barriers exist and, if so, what can be done to overcome them.

## Uriarra settlement

**MRS BURKE**: Mr Speaker, my question through you is to Mr Wood as the minister for emergency services—or perhaps I should say more currently, non-emergency services. Minister, on Tuesday 19 August 2003 I met with residents of the Uriarra settlement to discuss the McLeod report and the recently released "Shaping our territory" non-urban study. Given the government's recent public statements and confident boasts of its preparedness for this fire season, and despite the fact that our next fire season is now less than six weeks away, can you please explain why the burnt, dead trees and other similar debris have still not been cleared away from around these residents' homes and surrounding areas? Can you explain why no strategic firefighting education plan has yet been developed for these people? Can you explain why the recently installed fire equipment is, according to the residents, totally inadequate, with hoses that do not even reach large sections of structures and residents receiving no instruction on their use? Can you explain why there is still not adequate street lighting at Uriarra?

**MR WOOD**: I will try to remember all the parts of that long list. Clean-up: there has been, to the best of my knowledge, some clean-up at Uriarra. Mrs Burke suggests that some remains to be done. I will talk to officers about that and see what further needs to be done and what needs to be done urgently.

Street lighting: the standard of street lighting has not been the best for quite a long time. I will talk to DUS or I will talk to my colleagues to see who can generate some activity there. I would expect that the current standard is not being met at Uriarra, but I will check that.

Mrs Burke spoke about fire equipment. There has been some work done there. You tell me that the hoses are not long enough.

**Mrs Burke**: No, the residents have told me and I am passing it on to you.

**MR WOOD**: Okay, if they are not long enough we will have to have a second look at that. I didn't make a note of another one or two—

**Mrs Burke**: Firefighting education plan.

**MR WOOD**: An education plan. That would have once been simple to do at Uriarra because there were a lot of experienced firefighters there. In the circumstances, I do not know whether there are too many of them left, but I will talk to the Emergency Services Bureau about that. There is a deal of activity going on around the place, and I will see that Uriarra is incorporated into that.

**MRS BURKE**: Mr Speaker, I ask a supplementary question. Minister, thank you for that explanation. Given this lackadaisical approach, it would seem, when will the government and you, as the minister, drop the rhetoric and simply just get on with the job and do something for these people at Uriarra?

**MR WOOD**: That is just an assertion—it is not a question.

**Mrs Burke**: No, it's a question.

**Mr Smyth**: When will you?

**Mrs Burke**: A timeframe.

**MR WOOD**: The question has been answered, Mr Speaker.

## School excursions—fees

**MS DUNDAS**: My question is directed to the Minister for Education, Youth and Family Services. Parents of children in public schools are expected to pay for school excursions and school camps. Does the Department of Education, Youth and Family Services have a policy that sets out the maximum amount that parents can be asked to pay for such activities in a school year?

**MS GALLAGHER**: The department has a policy relating to the costs and fees that parents might have to pay. That policy is underpinned by the principle that parents who cannot afford to pay should not have to pay. However, that should not prevent students from participating in any activities. I am not sure whether or not a maximum amount is specified in that policy. I will obtain that information and convey it to the member. The policy that I have seen acknowledges the fact that additional costs might have to be paid. Most parents are able to pay or to contribute towards those costs and fees. If some parents are not able to pay, those students are accommodated.

**MS DUNDAS**: I ask a supplementary question. The minister, in the latter part of her answer, intimated that children whose parents cannot afford to pay are accommodated. Many constituents have expressed concern about the fact that their children have not participated in school activities because their parents cannot afford to pay those costs and fees. Will the minister provide more detail about the way in which those students are being accommodated?

**MS GALLAGHER**: I have not had brought to my attention any cases in which children are missing out on, or are not allowed to participate in, school activities. The member indicated that constituents had expressed concerns to her. If the member forwards those cases to me I would be happy to look at them. I would be most concerned if students were missing out on activities because their parents were not able to pay. I will take up that matter with the department.

## Housing affordability

**MR PRATT**: Mr Speaker, my question, through you, is to the minister for housing, Mr Wood. In the 2001 election you promised to implement an affordable housing strategy. Since then, the first home buyer market has shrunk by 14 per cent, while the rest of the housing market is booming. The average house buyer in the ACT is now paying an average of $48,000 to your government in taxes and charges, including stamp duty which Mr Quinlan jacked up by 22 per cent in his first budget. There is a universal complaint in the building industry throughout the ACT about the shortfalls in the provision of land in Canberra by your government.

Why have you failed to implement an effective, affordable housing strategy, which you promised the people of Canberra you would do?

**MR WOOD**: Mr Speaker, I think I heard Mr Pratt say the government imposes taxes of $48,000. Was that right?

**Mr Pratt**: Yes.

**MR WOOD**: I'd like to see a breakdown of that some time. I don't know where that comes from. Perhaps you've included the GST that the Commonwealth government imposes. If we look back in history, it was probably the trigger point for this rapid increase in housing prices.

The main thrust of Mr Pratt's question related to land supply. No-one, I don't think, will dispute here that you don't turn land supply on and off at the moment; it takes a long time. The supply of land we've been living off, certainly in the first year of this government, was what you people put into place, what you put out into the marketplace. That is what you put into it. I would assess that your judgment was very bad. As well as you can assess these things—and I acknowledge it is not always easy—there simply wasn't enough land out there. I think that's the case.

As I attend closely to the question of high housing costs, it is predominantly, in this age, the land component. I have seen graphs—I've no doubt you have too—that show the actual material costs of building a house have increased only as you would expect. But the rapid increase, not just in the ACT but elsewhere, is in the land component.

What are we doing? We are resuming the government control of land development. Mr Corbell has established additional to that a land reserve so that we can call on land rapidly—something you should have done—when the need arises. If you had thought of things like this, Mr Pratt, we might not have been in the circumstances that we are today.

The government is resuming land development so that the benefits of all the profits from that are returned to government; that we've got better management of it. And we anticipate an outcome that the land prices will steady—if nothing else, will certainly steady—and hold; and maybe, with the increased supply of land that will be put out there, will drop and houses will become more affordable. That is the main component of bringing about affordability, and that is the exact component that the government has been attending to.

Sorry, Mr Pratt, you just don't click your fingers and have it happen overnight.

**MR PRATT**: Mr Wood asked me to clarify a question. I do have the answer to that.

**MR SPEAKER**: You can ask a supplementary question, and that's the limit of it.

**MR PRATT**: Okay. The $48,000 is, in fact, HIA figures published last month. Minister, why have you failed to address affordable housing in the ACT?

**MR WOOD**: Mr Pratt, can I suggest to you that you go and read *Hansard* tomorrow when it's out and read again what I just said to you.

## Housing rents

**MR STEFANIAK**: Mr Speaker, my question is also to Mr Wood. Minister, yesterday you announced that ACT Housing rents for tenants who pay full market rents would increase by 11.7 per cent, in line with the market price. Some people in the sector have told me that there are two main reasons why private rental rates have risen so much. The first is that, in Mr Quinlan's first budget, he raised a range of property taxes, including stamp duty. Secondly, the ACT government hasn't supplied sufficient land, thereby contributing to a shortage of rental housing.

Minister, if you really are the housing minister, what will you do to help those many tenants that are struggling to pay rent?

**MR SPEAKER**: Mr Wood, before you answer: Mr Hargreaves, can you carry out the conversation somewhere else?

**MR WOOD**: What will I do to help those struggling tenants? I'll tell you what: I think any private renter in this town—and that's the majority of rental people; probably most people own their own homes—would be very happy with a deal that says, "You don't have to pay more than 25 per cent of the income in rent." Any private renter would be satisfied with that.

I think Mr Stefaniak was the minister when that percentage rose from 22½ per cent to 25 per cent. I know I was in opposition and I was opposition spokesman at the time. I mumbled a bit about it, but I didn't raise very much objection because I thought it was fairly reasonable.

That seems to me a pretty good deal. If your income takes that rent above that level, you go back to ACT Housing and say, "Look, I think I might now be eligible for a rebate." You won't have to pay more than 25 per cent of your household income in rent. That is one of the reasons why so many people are on the list to get into ACT public housing. That, Mr Stefaniak, I believe, is a fair and reasonable deal. I'm pretty sure—to repeat—that any private renter would be very happy with that.

**MR SPEAKER**: Mr Stefaniak, a supplementary?

**MR STEFANIAK**: Thank you, Mr Speaker. I have heard that some tenants have found out about their increase in rent through the media rather than being told individually. Firstly, would you comment on whether that's so? If it is so, why weren't they advised individually by letter rather than have to hear it through the media?

**MR WOOD**: That may be the case. Last year, we were very careful to see that letters went out before there was any public statement. This year, a different system was used and phone calls were made. Phone calls were made, not to every Housing tenant but to tenants who had a fairly significant increase. It was thought, "Hang on, these people are

going to be affected; we had better tell them straight away." That happened before the letters went out to everybody.

Some of those tenants—one at least—went straight to the *Canberra Times*. That is their right; I don't complain about that. Therefore, it was in the media yesterday, when the letters are going out today. So it was the timing of it. It should have been done differently.

I think in future we won't ring anybody; we'll go back to what we did last year and just put it all into letters so that they will go out, and a day or two later make a public statement. Yes, it would be better that they get the letter first. I apologise to them; there's no doubt about that.

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

## Supplementary answers to questions without notice

### Children—foster carers

**MS GALLAGHER**: On Tuesday, Ms Tucker asked me a question relating to the number of children who are not currently able to be placed in a foster care family, where these children are currently accommodated, and how long they have been there. I can partially answer the question. More detail will come with the answer to Mrs Burke's question on notice. But for today, the latest data available points to a 21 per cent increase in the number of children admitted to care between 30 June 2002 and 30 June 2003. The numbers were 224 and 273, respectively.

I am advised by the placement panel that their data indicates that in August 2003 eight children were in short-term foster care and in need of medium to long-term family placement. In all instances, temporary arrangements provided by agencies are in place to accommodate those children while more satisfactory permanent foster care placements are arranged in conjunction with non-government agencies and Family Services. If you would like more in the form of a briefing in the meantime, I am happy to arrange that for you.

### Adopt a Road program

**MR WOOD**: Yesterday, Mr Cornwell sought an update on public liability insurance negotiations regarding the Adopt a Road program. A group scheme for voluntary organisations has been set up by a consortium of insurers, that is, the Community Care Underwriting Agency. The Department of Urban Services and Treasury recently received a quote from that agency for public liability cover for the uninsured Adopt a Road groups. The quote is for a group scheme to cover 40 groups.

DUS is currently negotiating with those Adopt a Road groups that are still uninsured to ascertain that the proposed insurance cover is acceptable; so they are working through it. Additionally, I have been advised that litter is being collected by Urban Services contractors in accordance with their contracts.

## Removal of person from public gallery

**MR SPEAKER**: Members may recall that I indicated to Mr Cornwell that I would keep the house informed as to developments about the person who was sent from the Assembly a short time ago. I wish to inform members that, following the removal of a person from the public gallery on Tuesday during question time for disorderly conduct, I have ordered that the person concerned not be readmitted to the precincts as that person has disturbed Assembly proceedings on three occasions.

I have instructed that she not be readmitted until she signs a written undertaking to abide by the relevant standing orders and not create disorder in the precincts. The person attempted to enter the precincts today, but was refused entry. In the event that the person attempts to contact members or their staff for entry, I ask that they abide by my order. For these purposes, details of the name of the person can be obtained from the serjeant-at-arms or the principal attendant.

## Auditor-General's report No 9 of 2003

**Mr Speaker** presented the following paper:

> Auditor-General Act—Auditor-General's Report No 9 of 2003—*Annual Management Report for the Year Ended 30 June 2003*, dated 20 August 2003.

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

> That the Assembly authorises the publication of Auditor-General's Report No 9 of 2003.

## Financial Management Act
### Paper and statement by minister

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

> Financial Management Act, pursuant to section 18—Statement of Authorisation of Expenditure in 2002-2003, including the Statement of Reasons for Expenditure against the Treasurer's Advance.

I ask for leave to make a statement in relation to the paper.

Leave granted.

**MR QUINLAN**: Mr Speaker, as required by the Financial Management Act 1996, I have tabled a copy of authorisations of expenditure under section 18 of the act and a statement of the reasons relating to the expenditure. Section 18 of the act allows the Treasurer to authorise expenditure from the Treasurer's Advance. The authorisation may provide for expenditure in excess of an amount already specified and specifically appropriated or an expenditure for which there is no appropriation.

The act states that, where the Treasurer has authorised expenditure under section 18, a copy of the authorisation and a statement of reasons relating to the expenditure are to be laid before the Assembly as soon as practicable after the end of the financial year. The 2002-03 Appropriation Act provided $19.4 million to the Treasurer's Advance. The final expenditure against the Treasurer's Advance in 2002-03 totalled $19.178 million, leaving $0.222 million unallocated—very frugal, I would suggest.

The Assembly has already seen items 1 to 14 as part of the supplementary appropriation process of 2002-03. Significant other items provided include $4.74 million to address additional funding for expenditures related to the courts and the Emergency Services Bureau. This included funding for increases in the remuneration of judges, the master and magistrates, and increasing operational demands of ESB, including the costs of managing and maintaining equipment; $1.95 million to assist in providing for the replacement of rural public housing properties destroyed in January 2003 bushfire areas, which was part of the government's commitment to fund $8.8 million in relation to the replacement of these houses; and $1.446 million of funding for increased wages and salaries related to enterprise bargaining for firefighters. Mr Speaker, I commend the paper to the Assembly.

## Totalcare
### Paper and statement by minister

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

> Report of the Review of the Operational Activities of Totalcare Industries Limited—Public disclosure of certain information—Letter of advice from the Acting Auditor-General to the Chief Executive, ACT Department of Treasury, dated 5 August 2003.

I ask for leave to make a brief statement.

Leave granted.

**MR QUINLAN**: Members will recall that I provided to this place on request details of the management review and suggestions for the future of Totalcare. There was a minimal amount of material items blanked out of that report under the banner of commercial-in-confidence. At the time that I tabled that report, I did advise the Assembly that I had already sought advice from the Auditor-General as to the appropriateness of the blackouts that were made within that report. I now have the auditor's agreement that that minimal amount of blacking out was a reasonable thing to do in the circumstances.

## Paper

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

> Canberra Tourism and Events Corporation Act, pursuant to section 28 (3)—Canberra Tourism and Events Corporation Quarterly Report for January to March 2003.

Members will, of course, recognise that the Canberra Tourism and Events Corporation is now Australian Capital Tourism.

## Health—Standing Committee
### Report No 4—government response

**MR WOOD** (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for Police and Emergency Services and Minister for Arts and Heritage) (3.36): Mr Speaker, on behalf of Mr Corbell and for the information of members, I present the following paper:

> Health—Standing Committee—Report No. 4—*Looking at the Health of School Age Children in the ACT*—Government Response, dated August 2003.

I move:

> That the Assembly takes note of the paper.

I seek leave to incorporate Mr Corbell's speech in *Hansard*.

Leave granted.

*The speech read as follows—*

> Mr Speaker, in April 2002 the Standing Committee on Health resolved to undertake an inquiry into the health of school-age children in the ACT. The Committee tabled its report on 7 May 2003, with 48 recommendations and 68 sub-recommendations.
>
> I would like to take this opportunity to thank the Committee for its work on this issue.
>
> The report has highlighted a number of health issues that will assist the Government in its work to support the development of resilient, optimistic children and young people.
>
> In the 2003-4 Budget, the ACT Government highlighted its vision of building this community and we place particular emphasis on giving our children every chance to realise their potential. Accordingly, the health and wellbeing of children will be a strong theme of the Canberra Plan.
>
> In line with one of the key themes of the Committee's Report, the ACT Government is working to improve the integration between policies and programs to better meet the needs of children.
>
> For instance, work on the development of the proposed ACT Children's Plan, the Mental Health Strategy and Action Plan, and the Alcohol and Other Drugs Strategy is occurring in a co-ordinated manner.

This Government has given careful consideration to the recommendations of the Committee and we support 30 sub-recommendations, and agree in principle with a further 14 sub-recommendations.

Let me briefly outline the Government's current and proposed action in response to these recommendations, which include:

A Curriculum Renewal Project announced in the 2003-2004 Budget. This will include a focus on physical activity in schools and a "human values" program.
A new initiative in the 2003-2004 Budget that will see 17 youth workers allocated to high schools over the next two years.
An announcement in December 2002 to develop an ACT Children's Plan to clearly articulate the Government's commitment to children and families.
The development of an ACT Mental Health Strategy and Action Plan in 2003 to meet the mental health needs of the whole community.
A commitment through the *Health Action Plan 2002* to develop a public health nutrition plan that will incorporate the needs of children and young people into its key priority areas.

Provision of funding for an ACT Youth Smoking Prevention Project, which will involve young people in its development, implementation and evaluation.

The development of a new *Guide for Planning and Conduct of Special Events* to outline responsibilities and requirements for special events, including issues such as safety, security, lighting, transport and emergency services.

The development of a Caring for Carers policy for the ACT Government that will consider the needs of young carers.

And funding to undertake a TravelSmart Schools Pilot Project in two schools to raise awareness of the impacts of car use and to encourage walking to school through the establishment of "walking school buses".

As stated earlier, the Government announced in December 2002 the development of an ACT Children's Plan, which clearly articulated our commitment to children and families.

The Plan will encompass antenatal, infancy, the early school years and middle childhood, and will address both universally provided services to families and services targeted to address the needs of specific groups.

Mental illness is also a growing problem that presents challenges to the community as a whole, as well as for individuals and families.

The ACT Government is committed to addressing the growing needs of the ACT population through the development of a Mental Health Strategy and Action Plan in 2003.

A number of recommendations will also be considered through the development of this Plan including:

- Mental health education;
- The need for an early psychosis intervention centre; and
- Services for children diagnosed with behavioural difficulties.

This Government is committed to looking at best practice approaches to responding to key health issues for children and young people.

At this stage the Government is not able to support the recommendation that we have a health promotion campaign highlighting the associations between asthma, and children's bedding and poorly ventilated cooking.

Current evidence concerning the associations between bedding types and asthma is inconclusive. A formal study is under way on this subject in the ACT and NSW, which is aimed at clarifying this issue, but the results will not be known for another two years.

As well, there is currently a lack of clear evidence concerning associations between air pollutants generally – both indoor and outdoor – and asthma. This matter is, however, currently the subject of a report commissioned by the Commonwealth and undertaken through the National Asthma Council.

The Government's current priorities, which reflect those of the National Asthma Council, are to focus on campaigns that highlight:

- The importance of regular medical review;
- Assessing severity of asthma,
- First Aid for Asthma,
- Compliance to drug medication regimes, and
- Asthma action plans.

These approaches have been shown to achieve improved health outcomes for children with asthma.

The Government is also not able to support the incorporation of information about active transport methods in curriculum areas, such as "road ready" courses.

The 'Road Ready' program is already an integral part of the driver licensing system and the incorporation of general information about alternative transport systems would add to the course length and detract from its educational objectives.

That said, some of these issues will be addressed at a primary school level, through curriculum based classroom activities developed as part of the ACT TravelSmart Schools Pilot Project. These resources will be aimed at influencing children's and families travel behaviour and reducing reliance on car travel to and from school.

Overall, implementation of the accepted recommendations contained in the ACT Government's Response:

- Will require government and community sector partnerships;
- Will be increasingly based on a person-centred approach rather than traditional program boundaries; and
- Will provide opportunities for a greater focus on early intervention and prevention approaches.

> The ACT Government has, through its response to the Committees report, demonstrated its ongoing commitment to the health of school-age children. I commend the report to the Legislative Assembly.

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

## Paper

**Mr Wood** presented the following paper:

> Cultural Facilities Corporation Act, pursuant to subsection 24 (8)—Cultural Facilities Corporation 2003-2004 Business Plan.

## Indigenous education
### Paper and statement by minister

**MS GALLAGHER** (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (3.38): Mr Speaker, for the information of members and in accordance with the resolution of the Assembly of 24 May 2000, I present the following paper:

> Indigenous Education—Sixth Six Monthly report to 28 February 2003.

I seek leave to make a short statement.

Leave granted.

**MS GALLAGHER**: Mr Speaker, I am very pleased to present the sixth report on performance in indigenous education. The report covers the period to 28 February 2003. The Labor Party initiated this reporting in 2000 and five reports have been tabled. The government is pleased to continue this reporting.

The continued commitment of the government to improving educational outcomes through indigenous students is reflected in the initiatives and programs in place. The government has a vision for this community that is inclusive of all Canberrans. There is particular recognition of the needs of the most vulnerable, which includes indigenous young people and children in our schools. Many of these young people require targeted support and much is being done to provide it.

It is the government's commitment to ensure that the outcomes for indigenous students are the same as those for non-indigenous students. To this end, we are working towards improved participation, retention and outcomes for indigenous students within the context of family, community and government assistance and support.

There are many examples in the report of schools and their communities working to improve outcomes for their indigenous students. I know that you will be pleased to read in the report of the initiative being shown in our schools to promote cultural awareness, to involve indigenous students in the life of the school and to improve educational outcomes for those children. An example is Canberra High School establishing a

reconciliation support group. The group plans activities and excursions and purchases resources for the school. The principal has commented that this is one of the most active and constructive groups in the school.

The ACT indigenous community today, with significant representation from across Australia, is unique in its diversity and mobility. The *Within Reach of Us All, Services to Indigenous People Action Plan 2002-2004* recognises this through its acknowledgment of the strength, spirit, endurance and diversity of Australia's indigenous people. The action plan describes four commitments that articulate our resolve to make a positive difference to the lives of indigenous young people in our community.

There are a number of key elements that I would like to draw to the attention of members. The first is about overcoming racism and valuing diversity. Policy making and the implementation of those policies are an important part of day-to-day lives in schools. Policies on Aboriginal and Torres Strait Islander education and combating racism in school and the workplace are both in the review phase to ensure their currency.

Anti-racism contact officers in schools are appointed and trained each year and provided with a range of comprehensive materials to support students. The government takes these responsibilities seriously and is keen for school communities to be fair and just places, with an emphasis on respect for others and valuing the diversity our rich community brings.

The second is about forming genuine and ongoing partnerships with indigenous communities. I am pleased to remind members of the signing of the indigenous education compact last December. This agreement underlies the commitment parties have to working together to ensure continued improvements for indigenous youth. Public acknowledgment of the compact is a way of recognising the commitments contained within it as core business in our preschools, schools and colleges.

Aboriginal and student support and parent awareness committees established within 75 of our government schools are parent based and include staff members. To illustrate the work they are doing, I will briefly describe Melba High School's activities. Their committee organised a whole school program in September. They organised Islander and Aboriginal dances, cooking, art and indigenous games. They also organised a camp for their indigenous students with the Wreck Bay community.

The third key element is about creating safe, supportive, welcoming and culturally inclusive educational and service environments. Cultural awareness training for staff has been well received and has served to highlight the needs of the indigenous community. Participating executive staff and managers recognise the applicability of the training to their business and are finding ways to include this knowledge in decision making. Teachers and school administrative staff have also had the opportunity to take part in a variety of training dedicated to indigenous issues.

Apart from professional development being undertaken, many schools are incorporating indigenous art and culture into the fabric of their schools. Gordon Primary School has organised the painting of a rainbow serpent which snakes its way all round the school. An indigenous artist and the Ngunnawal community worked with the school and every

student was allowed a metre of the snake to design and paint. Such was their enthusiasm that they worked on weekends and after school, involving all the school community.

I am pleased to say that four new indigenous teachers were recruited to work in our schools this year. You would appreciate the difficulty of increasing the number of indigenous staff across all our government agencies and this number is seen as an excellent effort.

The fourth key element is about indigenous children and young people achieving outcomes equitable to the total population. In the financial year 2002-03, the government provided extra resources to upgrade the level and number of positions of staff working with indigenous students in our schools and their families.

As with all new initiative, it has been important to get it right from the start. Lengthy and comprehensive consultation and negotiations have taken place between staff, the indigenous education consultative body, the Community and Public Sector Union and human resources staff of the department. The recent enterprise bargaining negotiations for the ACT public service have also had a significant impact on the consultation period. Agreement about a proposed restructure and the upgrading of positions was reached in February and a person engaged to implement the plan.

Teachers of the indigenous student network met during the fourth term last year to explore examples of the work happening in our schools. Teachers from a Koori preschool, primary school and high school presented their programs, which were all focused on inclusivity.

This report details a range of information about indigenous student outcomes, including literacy, numeracy, attendance at school, retention at school through the high school years and the awarding of year 10 and year 12 certificates. I am pleased to say that progress has been made in these areas, although much more needs to be done.

I am delighted that the first cohort of indigenous young people has recently graduated from two government-funded targeted programs that are supporting those with high needs. The issues range from low level literacy and numeracy skills, homelessness and mental health problems through to the need for improved recreation opportunities. Other programs under way target indigenous students either exclusively or as part of a larger group of students. Some of these are on an indigenous mentor pilot program in two high schools and a student pathways plan initiative under development for all students in the latter years of high school.

A deliberate effort to engage more young indigenous people in vocational courses comes through in *Partners in a learning culture—ACT indigenous action plan 2003-2005*. An apprenticeship pilot in building and construction saw 15 indigenous students taking part and plans are under way for more opportunities like this.

Finally, I would like to emphasise the importance of this report. It demonstrates that the government's initiatives and programs are addressing the needs of indigenous students and their families, but more needs to be done. I commend the sixth report on performance in indigenous education to the Assembly. I move:

That the Assembly takes note of the paper.

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

## Tax burden—people of Canberra
### Discussion of matter of public importance

**MR SPEAKER**: Mr Smyth has written to me proposing that a matter of public importance be submitted to the Assembly for discussion, namely:

> The high and rising tax burden which this government is placing on the people of Canberra.

**MR SMYTH** (Leader of the Opposition) (3.47): Mr Speaker, the Treasurer seemed to be taken completely by surprise by the $115 million budget surplus for the year ended 30 June 2003. He does not have the faintest notion of what is going on around him. It is one thing to be lazy—he is well known for that—but it is quite another to be caught napping, as the Treasurer has been on this occasion. Having forecast a surplus of almost $6 million at the start of the financial year, then $61 million only two months before the end of the year, he clearly has no idea of what is happening in the ACT economy.

The surplus of $115 million at 30 June this year totally changes the starting point for the current financial year. It shows that many of the assumptions underpinning the 2003-04 budget are wildly astray, as indeed were key assumptions on which the 2002-03 budget was based. Quite bluntly, the Treasurer got it wrong, seriously wrong—1,900 per cent wrong. With a track record like that, can you believe anything he says? With an error of 1,900 per cent, how can anyone, even his own Labor colleagues, have any confidence in his projections for the financial year 2003-04? How do we know that the current year's projected outcome will not also be in error by a factor of 1,900 per cent?

Mr Speaker, what we do know is that the revenue of the general government sector for 2002-03 was some $289 million more than the Treasurer said that it would be when he confidently brought down his budget for that year. Taxes, fees and fines were $91 million more than the Treasurer said they would be. Let's heed the ominous warnings that government spending was $143 million more than the Treasurer said it would be, which shows that Labor still does not know how to control its spending.

Indeed, it is sobering to note that if revenue had been what the Treasurer expected he would now be about 40 per cent back down the track to the $344 million deficit which was the hallmark of the previous Labor government but, because he inherited such a sound economy, he can bask in a $115 million surplus which was the outcome of sound foundations laid several years ago.

What the Treasurer has missed is that budget policy under the previous government was to make prudent surpluses and then return any excess above that level to the people who provided the funds in the first place. We always said that was better than simply piling up surpluses. That is a fundamental point of difference between Liberal and Labor. We are for lower taxes and Labor, as we are now seeing, is obviously for higher taxes. With taxes, fees and fines up $91 million more than the Treasurer said and total revenue up by

a massive $288 million more than he said he would receive, the Treasurer now has a golden opportunity both to reduce the level of taxes paid by Canberrans and to simplify the tax system.

Let the community not forget that Labor stands for higher taxes and big spending. In sharp contrast to Labor, the Canberra Liberals believed in reducing the burden of taxation. We had already started to reduce the tax burden on ordinary Canberrans by reducing motor registration charges by $10 million and increasing the threshold for payroll taxes for small businesses. As a result of the new taxation system, increased GST revenue offers a real opportunity to reduce the reliance of ACT public finances on property taxes. Indeed, the ACT is expected to receive $10 million more from the GST this financial year than originally expected, and we are already in a GST-positive situation.

Labor promised to be a low taxing government but, like all their so-called promises, you cannot believe them. On 26 May 2000 at the National Press Club, in what was dubbed the drover's dog speech, the then Leader of the Opposition, Mr Stanhope, stated, "We need a government that will focus on delivering quality services and low tax rates." We do need such a government, Mr Speaker, but Labor cannot and will not do it. This government has delivered neither quality services nor low tax rates.

Mr Quinlan, in the *Canberra Times* of 18 July 2002, said that his taxation philosophy was "as low as possible"—a low philosophy perhaps, but certainly not low taxation. The evidence belies his statements. On 7 April 2003, Louise Maher asked Mr Quinlan, "How many horrible new fees and charges are you going to inflict upon us?" I suggest that he probably said it flippantly, but Mr Quinlan replied, "Heaps and heaps and heaps." That is about the only time he has been true to his word.

Mr Speaker, this year's budget contained 11 revenue grabs disarmingly—I say "disarmingly"—called initiatives, although some of them were scrapped later. "Initiatives" is now Labor's code for tax increases. The previous budget contained five revenue grabs, as well as hefty increases in existing taxes and charges. Taken together with Mr Quinlan's aborted attempt to introduce a quite stupid new rates system, this government has put forward 17 new revenue initiatives, nearly one new tax or charge for every month in government. That is Labor showing its true colours.

Let's go through some of them, Mr Speaker. The Treasurer proposes to raise $3.2 million in additional revenue in gambling taxes, mainly from some of the neediest people in this community, that is, problem gamblers. This budget contains provisions to remove the concession on corporate restructure, raising an estimated $1.1 million, and a tax on the transfer of business assets over $1 million, which the Treasurer anticipates will raise $1.7 million.

We now have confirmation that the loan security duty will not be reintroduced, at least not in the short term. But do not worry about the impact; just slug them because they are businesses. It is clear now that the Treasurer did not like the open and accountable draft budget system that the Canberra Liberals had. He does not like to give his victims any warnings that they are going to be hit with new charges and taxes.

Who can forget the aborted bushfire reconstruction levy? It was another in a series of blunders by this government. The bushfire tax was just a knee-jerk reaction. It was clear from the start that, with the insurance prudently taken out by the Canberra Liberals and with Commonwealth assistance, the government never needed this tax. It says a lot about the Labor mentality that the first thing they thought of was a new tax.

On the matter of Commonwealth financial assistance, let me remind the people of Canberra that Mr Cornwell had to prompt the Chief Minister on several occasions before he even bothered to send a letter to the Prime Minister. As usual, the Chief Minister was all words and no action. Perhaps he was just waiting for another review, or perhaps he was just enormously complacent, as he said last Tuesday.

Revenue from land sales has been at record levels, making it obvious that the bushfire reconstruction tax was totally unneeded. At the time, the ACT was on the road to recording a surplus of $100 million. That was before Mr Corbell and the saga of the bouncing cheque jeopardised $38 million of it, so $115 million may well have been $153 million, but the government has bounced back and has actually picked up $42 million to go into this year's budget from that failed land sale. Really, Mr Speaker, these people have no idea how to run a business or a government.

Mr Quinlan, after caving in and giving up on the bushfire reconstruction tax, expressed his regret on learning that Ms Tucker was prepared to support it, which was really quite peculiar because if anything unites Labor and the Greens it is the hunger for more taxation. The bushfire levy is the classic illustration of this Treasurer's penchant for introducing a tax and then asking questions later.

Labor introduced a parking space levy which they anticipated would raise $2.5 million. This tax would hammer not only local businesses, but also hotels and motels providing guest parking. When quizzed at the estimates process, Labor had no idea how many parking spots it would affect or who would be affected. Even the charities may well have been hit.

Mr Speaker, the money will not go towards public transport or improving services, but instead will go straight into the Treasury, making it clear that the government's aim is simply to raise revenue. This government is now introducing continuous car registration, but we all remember the cries of outrage from those opposite when I tried to introduce that measure. Labor's outrage has died down and obviously was phoney in the first place.

This government has also increased fees and charges for a variety of everyday services, raising an additional $350,000. In the 2002-03 budget the government provided for the introduction of pay parking in Belconnen and Tuggeranong. As a result, we had ordinary workers picketing the Labor Party conference recently in protest at this measure and protests by students at Lake Tuggeranong College, the only college students in Canberra who have to pay to park when they go to school.

Mr Speaker, this government increased the number of speed cameras and red light cameras, purportedly as a road safety measure. While it may reduce the number of crashes, who can forget the unprincipled opposition of Mr Hargreaves as Labor

spokesman when he claimed that it was merely revenue raising? When the Liberals do it, it is bad; when the Labor Party does it, it is good. But it is all about revenue and these people will be measured by their words. That is another example of Labor saying one thing in opposition and doing another in government. They are phoney and opportunistic. Who can believe a word they say.

The Canberra Liberals reduced vehicle registration costs for motorists by $10 million. The first Quinlan budget slapped the tax back on again. As a result, the ACT has the highest charges in Australia for vehicle registration and third-party insurance. The Labor Party opposed tip fees in 1995-96, despite the fact that it was clearly an environmentally responsible move. It is good to see the conversion, the road to Damascus. In his first budget, Mr Quinlan increased tip fees to earn an additional $1.56 million from this source. Again, Labor said one thing in opposition and another in government. You just cannot trust them.

This government has not been shy in putting up existing taxes as well. Mr Quinlan increased stamp duty by 22 per cent in his first budget. As a consequence of Mr Quinlan's grab for cash, according to the HIA figures, the cost of ACT government taxes adds just under $50,000 to the cost of a new house. Thirty years ago, you could get a pretty good house in Canberra for $50,000.

My colleague Mr Cornwell will be speaking on the impact of ACT government taxes and charges when he speaks later in this debate. When in government, the Canberra Liberals planned to increase the threshold at which small businesses started to pay payroll tax to $1.5 million from July 2001. Mr Quinlan cancelled this increase in the threshold in his budget five days before it was due to start. To add insult to injury, the government changed the formula, effectively increasing the rate of payroll tax by 1.1 per cent. The people of Canberra, understandably, wonder why Labor taxes employment and puts people out of jobs.

The Treasurer is squandering two golden opportunities. The first opportunity is to rationalise the territory's ramshackle tax collection system once the GST comes on stream. State and territory treasurers are supposed to be reviewing stamp duties in particular as part of the introduction of the new tax system. The Treasurer should be doing so, rather than dreaming up more complex taxes that make our tax system even more ramshackle and onerous.

The Treasurer should look at raising the threshold for payroll tax and at the payroll tax structure to reduce the impact on employment. The Treasurer should be looking at reducing the tax burden met by ordinary Canberrans, as the Canberra Liberals were doing. Instead, his two budgets have dramatically increased the tax burden on ordinary Canberrans. A $90 million increase in taxes, fees and fines is a massive burden. The Treasurer claims that the taxes are paying for improved services. But he would say that, wouldn't he?

Canberrans are, rightly, sceptical of these claims. One has only to look at the rising waiting lists to understand the doubt that they would have on this issue. It is time that the Labor government, not for itself but for the people of Canberra, started to reduce the tax burdens on its citizens and keep its promise to deliver low tax rates.

**MR QUINLAN** (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (4.01): First, let me say that I do think that the opposition did handle the budget debate this year very badly. I do not think that they really had their hearts and souls in it. I think that opinion is being confirmed today, because Mr Smyth belatedly apparently wants to have a rematch on the budget debate. I have to say that there was not much more in what he said today than in what he said previously.

I think it is important that we put the bottom line in perspective. Given that the gross revenue and gross expenditures of the territory are in the order of $2¼ billion to $2½ billion in a given year—you can double that figure for the actual turnover—it does not take a great deal of change in some of the bottom lines to make a difference at the margin.

Mr Smyth should have stayed at school a little longer. To be using 1,900 per cent as a statistic because the bottom line was out by that percentage is probably one of the most spurious and puerile uses of a statistic. To say that the difference between $1 and $20 is 1,900 per cent and then to take that 1,900 per cent statistic and apply it across-the-board really does show a very basic ignorance. Or is Mr Smyth plain stupid? From the various issues that have come across this Assembly in recent times, Mr Brendan Smyth is either artful or plain stupid. He is telling me that I know nothing about budgeting. Several weeks ago, Mr Smyth did not know the difference between a budget and an appropriation. Mr Smyth involved himself this week in a claim that the Liberals had called for public education. Of course, that was debunked. It has been a very bad week for the opposition, I've got to say.

We even had today the discussion of affordable housing and how somehow the difference in the affordability of housing relates purely to stamp duty imposed by the ACT government. That is just nonsense. Anyone who would peddle that nonsense is really doing what the Liberals have done under Brendan Smyth. John Howard, at the national level, has dumbed down Australian politics by throwing in these little grenades or by pure dishonesty. Mr Smyth seems to be dumbing down ACT politics without trying, because we have had these simplistic statements that if a bottom line moves by several million dollars, we should take the percentage of what it was, what it is and what it was meant to be and draw all sorts of conclusions. That is just madness.

This sort of stupidity came up in the last sitting of the Assembly and I did table some numbers that showed the differences in original estimates and final results under previous governments. Let me give you just a couple of figures. The last complete year that the Liberal government was in power was 1999-2000. The estimated expenditure for the year in their budget was $1,786 million in the GGS, in the government sector. They were out, by the end of the year, by $98 million, a figure of the same magnitude as Mr Smyth spoke of today when he said that there is something wrong with the budgeting process and what I do because I was out by $115 million.

In 1999-2000, the Liberal government budgeted for a deficit of $63.7 million. That year the territory enjoyed a surplus of $81.3 million, a $145 million difference. Mr Smyth says that we do not know what we are doing. That is plainly stupid. Budgets are estimates. There will be changes. What is dangerous about this level of stupidity? Let us

look at the other years. In 2000-01, when the Liberals did set the budget, the difference in expenditure between what was budgeted and the final result was $158 million. The bottom line was out from the original estimate by $56 million. The variances for years have been of the order of magnitude that we are seeing now.

In large part, the differences you see this year are fully explained, as seen in the land sales values. Did the repository of hindsight over there ever say before when we brought down the budget, "You're not allowing enough for land sales?" No. They accepted the estimate. Did they say in any of the budgets, "You have underestimated your revenue for land sales?" No; only towards the end of the year when we all knew that was happening anyhow.

That is, I have to say, somewhat frustrating. It is, again, one of those repetitions of Mr Smyth's attempt to dumb down debate in the ACT about matters financial and about matters political. That is a great shame. I am not going to table it again because I have tabled it once, but if members would like a little copy of the table that demonstrates just how different original budgets and final results have been, please call my office.

I have to speak about some of the other matters that Mr Smyth did mention. Of course, being from the Liberal Party, he is the man of business. He thinks we should improve on payroll tax. One of the reasons that our budget result is better than expected is that we are doing very well in payroll tax; business is booming. What are we trying to achieve by changing the payroll tax regime? There is no foundation to the claim that the payroll tax regime that we have is inhibiting business; on the contrary. Look at the results.

Let me put our payroll tax regime in perspective. In New South Wales, if you employed eight people all year at average weekly earnings you would start to pay payroll tax. In the ACT, you would have to employ 23 people at average weekly earnings before you paid payroll tax because of the different structure. At average weekly earnings, you would have to employ nearly 100 people before you would pay more in the ACT than you would pay against the national average or New South Wales. Our current payroll tax regime is now very favourable to small and medium business. Because there is no depth of thought on the other side of this house, they say, "What will we talk about? Let's talk about tax. We will talk about payroll tax.

Stamp duty has come up. John Howard and Peter Costello speak about stamp duty, so they had better get on that bandwagon. Of course John Howard and Peter Costello are going to do so. They want to shift blame to the states for the high cost of housing. I have stood on my feet in recent times in this place and said that housing costs are not cost driven; they are driven by the market, for god's sake. Look at the results of the first home owners grant. Who got the money? The sellers got the money and the builders got the money, not the first home owners.

Someone questioned earlier today why the number of first home owners has fallen away. If I might digress into the housing question, if we want to make great change, immediate change, in the housing market and in housing affordability, we need to be very careful because out there is a whole raft of first home owners who just bought a house and, if we get stuck into the market and knock the bottom out of it, there are going to be people out there who have mortgages that are worth more than the house they live in. We do not want to do that, so there needs to be, please, just a little bit more sophistication of

thought than is behind this particular MPI and the speech that the very shallow Mr Smyth gave today and the very shallow Mr Smyth gives on a regular basis in his one liners in the media that border on misleading the public. It is a regular occurrence.

I return to the claim this week that the Liberal government warned us in relation to bushfires when that plainly was not the case. To try to build a whole resolution on it and a censure motion on it really does beggar belief and, I think, brings discredit on this place.

**Mrs Dunne**: I take a point of order, Mr Speaker. I seek clarification. We are debating a matter of public importance, not a censure motion, aren't we?

**MR SPEAKER**: We are debating a matter of public importance and it is open for the minister to discuss aspects that relate to it.

**Mrs Dunne**: But we are not censuring him yet.

**MR SPEAKER**: There is no point of order, Mrs Dunne.

**MR QUINLAN**: I respond to the point of order by saying that the point I am making is that this is a very shallow MPI delivered to us by a very shallow Leader of the Opposition who is consistent in his shallowness and consistent in making bald statements that do not necessarily have a basis in fact.

If the Liberals took power at the next election and the boom was coming off, where would we go? What taxes would be decreased or what services would be decreased? Effectively, Mr Smyth has said in this place today, "Set your budgets on the basis of the amount of revenue you are receiving today." That makes you, Mr Smyth, very dangerous. You have this very simple view. As I said, you are either artful or plainly stupid.

There may be some public attraction to make the simple statement, as John Howard did and I suppose you follow the leader, and point at the states by talking about stamp duty. That was to redirect pressure. It was John Howard who interfered with the housing market when he thought there was going to be a downturn, which did not actually occur, and brought in the first home owners grant, producing a whole pull forward and heating the market.

Mr Speaker, I have to say that if this MPI is the best that the opposition can put forward, it is not a very flattering commentary on this Assembly as a whole. I repeat that the order of difference between the original budget and the final result for the last financial year is not atypical of what has happened in this place over several years. The projected results through the course of the Carnell government and the final results varied markedly. Probably to the credit of assemblies past and, particularly, oppositions past, there was a little bit more maturity of thought when those matters were debated and we accepted that, in the turning over of something like $5 billion of revenue in and expenditure out, a few fractional changes can make a difference in a very tight bottom line.

**MR CORNWELL** (4.16): My colleague Mr Smyth has given a convincing account, I believe, of the central role of our friend over there, Ted the tax man, in increasing cost pressures.

**MR SPEAKER**: Refer to the member by his proper name or title, Mr Cornwell.

**MR CORNWELL**: I will, Mr Speaker, if he will agree not to call my colleague stupid. I would like, however, to address the role of the Treasurer's apprentice, Mr Wood—I use that word advisedly—as Minister for Urban Services, because it is as Minister for Urban Services that he has raised fees, fines and charges paid by ACT residents; in particular, taxes and revenue measures that have reduced housing affordability in the ACT, never mind Mr Quinlan's take on that. I will explain that shortly.

Recently, we had the spectacle of ordinary workers protesting outside the Labor conference at the introduction of paid parking, for example, in Tuggeranong and Belconnen. Indeed, Mr Athol Williams, who was, I believe, a candidate for the Labor Party in Brindabella, along with Mr Wood, in the 2001 election, and who is also, I believe, the Treasurer's factional colleague—correct me if I am wrong—organised this protest because he was shocked that this Labor government would introduce a charge such as paid parking on lowly paid workers.

Of course, it is not just lowly paid workers in Tuggeranong and Belconnen who will suffer as this government is also taking it out on students at Lake Tuggeranong College, who are also protesting and believe that they are being discriminated against. For a government that is so harsh upon discrimination, it is amazing how selective they can be when they want money. Further, delegates at the Labor Party conference, as I read, walked out during Mr Wood's speech because they were so disillusioned with his performance, as well they might be, indeed, with this Labor Government, along with other people in Canberra.

Mr Wood, your complicity in raising taxes and charges on ordinary Canberrans certainly is cause for concern. Unfortunately, members of this government do not care, because they believe that, so far as their own voters and, indeed, their own rank and file members are concerned, they can treat them as they will because they will not change their votes.

We will see what happens because, to add to the impost of parking levies, this government has also introduced a parking space levy. Civic businesses, hotels, motels and clubs will all be hit by this charge. The government is also planning to tax charities, as we are aware, with the Charitable Collections Act. I do not believe that there are any perceived benefits for the needy from this government interference in charities. Nevertheless, it will impose additional red tape and that will cost money.

In 2001, along with my colleagues, I voted to reduce motor registration costs paid by ordinary Canberrans by $10 million. Mr Quinlan always seemed unhappy about this proposal. This proved to be the case because, in his 2002-03 budget, he reimposed the tax on motor vehicles. Labor has hammered motorists to such an extent that the ACT now has the highest motor vehicle registration and third-party insurance costs in Australia.

I heard earlier Mr Corbell waxing lyrical about the number of people taking buses these days. That is hardly surprising in view of what has been happening with the increase in motor vehicle imposts. I suppose the trick will be to get enough of them on the buses and then increase the bus fares as well so that more money will be coming into the government coffers.

This government has also been no kinder to home owners or to renters. On 16 May 2002 Mr Wood, in a ministerial statement on housing, concluded:

> This government believes housing is the prerequisite for ensuring all members of our community have the opportunity to lead fulfilling lives and participate fully in the community, and it is the intention of this government to give priority to housing.

It is typical of this government to say one thing and do another quite the opposite. Unfortunately for home buyers, the only way that this government has given a priority to housing is as a source of revenue. When Mr Wood was making that statement in the Assembly, he was a member of a budget cabinet that decided to increase stamp duty by 22 per cent. The impact of this change on home buyers has been quite disastrous.

Recently, a house described as the worst house in Canberra was auctioned off in Giralang. Members may have seen reference to it in the newspapers. This house, which was what a real estate agent may call a renovator's special, was sold to the highest bidder for $288,000. There is no question that it was a wreck, and it had been for some considerable time. It had been abandoned for some years. At $288,000, it was just under the threshold at which higher rates of stamp duty start to kick in. If the worst house in Canberra just squeezes under that threshold, what chance does a young couple have of picking up a standard house under the threshold? The answer is zero, zilch, cactus. In fact, Mr Speaker, you can forget *The Block*; you would be flat out on this to get even a brick.

Recently, the HIA released figures showing that the average home buyer in Canberra pays $48,000 to the government. Every last cent of this $48,000 ends up in the Treasurer's budget. The Labor Party seeks to blame the GST for this problem. However, there are three reasons why that is a bogus allegation. To begin with, the GST ends up in Mr Quinlan's budget—not Mr Costello's—in the ACT. All GST revenue goes to the states and the territories. Incidentally, the state and territory governments were supposed to be phasing out stamp duties when the GST came on stream. We have yet to see that. Secondly, the GST is not levied on existing houses. Thirdly, the federal government has provided a grant of $7,000 to assist first home buyers, of which we are aware. Indeed, it was raised to $14,000 to help new home buyers into houses.

Mr Wood tried to blame this grant for the problem with housing affordability in Canberra. He said, "While I think first home buyer grants have helped a lot of people, the overall result seems to have been negative." I find that a difficult argument. But more to the point, what is Labor doing to help people who are in the private rental market? The answer is that they are not doing anything. As well as jacking up the stamp duty by 20 per cent, this Labor government has increased land tax by 16 per cent.

In spite of Mr Quinlan's comments about how first home owners are being ripped off and the grants are being passed on to builders, what do you think an increase in land tax of 16 per cent is going to do? It will be passed on by landlords to those renting. There is no change in that; it is the same as Mr Quinlan's comments about builders, et cetera, taking up the first home owners grants. Either that or it will make investors get out of the market if they cannot make up the difference. It is no wonder that housing affordability in the ACT under the current government's policies is the worst it has ever been.

The community is still waiting, Mr Wood, for an answer on what your people did in relation to the commissioning of a committee to look into housing affordability, which I understand reported last October. I would hope that you will join this debate, Mr Wood, and answer some of these points. The fact is that both a house and a car, the two most important possessions most of us have, have been ripped off under Labor.

**MR WOOD** (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for Police and Emergency Services, and Minister for Arts and Heritage) (4.27): Mr Cornwell invited me to come into the debate and I am delighted to do so. Mr Cornwell spoke for 10 minutes and did not issue many figures; he spoke in generalities. One figure he did give was about a 22 per cent increase in stamp duty. He said that there had been a 22 per cent increase in stamp duty. That is not right. There has been increased revenue collection from stamp duty, but there has not been an increase in stamp duty. There were some minor changes and a bit of equalisation going on, but there was not a 22 per cent increase in stamp duty; so Mr Cornwell was wrong.

One would have thought that, in a debate like this, Mr Cornwell would have access to a whole stack of figures, but they were not provided. The best figure we could get was from Mr Pratt, who said that there was something like $48,000 of ACT taxes in the cost of buying or acquiring a new house or building a new house. In fact, on an average house price of $280,000, the stamp duty on conveyancing is $8,500, I do not know where the rest would come from. Where would the rest come from?

**Mrs Dunne**: It is the stamp duty on the sale of land, the stamp duty on the transfer of land, the stamp duty on the house and land package.

**MR WOOD**: That is the cost of it. Let's look at the figures. Let me demolish Mr Smyth's argument and Mr Cornwell's argument by using simple figures. I invite Mr Cornwell to pay attention. In 1999-2000, under the former Liberal government, the total tax collection was a massive $633,298,000. I invite you to write that down—$633,298,000. The next year, 2000-01, the pre-election year, there was a very considerable drop—surprise, surprise! Write down $581,451,000 as the total tax collection. There is some variation around these figures with GST.

Let's go to the first year of the Labor government. The figure went from $633 million to $581 million. In the first year of the Labor government it was $526,617,000. The claim is that we are a high-taxing government. I am afraid we do not tax you as much as the former Liberal government. Brendan Smyth was Treasurer there for a little time, was he not?

**Mr Smyth**: No. Your memory is failing you, Bill.

**Mr Quinlan**: He is still working out the difference between a budget and an appropriation bill.

**MR WOOD**: Yes. In 2002-03, the total tax collection was $592,822,000. How can you sustain your argument that this government is a high-taxing government. There were some variations; some taxes dropped—

**Mr Smyth**: What was the variation?

**MR WOOD**: You have written those down. There was some reduction because some taxes were eliminated under the GST: $37 million of the difference between 2000-01 and 2001-02 was the reduction for taxes which were replaced by GST revenue. The difference without the GST impact was $18 million. I think that the figures speak for themselves. Read those figures and put them into your consciousness; it is as simple as that.

**Mr Smyth**: What was the variation? Tell the Assembly what the minor variation was.

**MR WOOD**: That is the story.

**Mr Smyth**: Do you know what the minor variation was?

**MR SPEAKER**: Order, Mr Smyth!

**MR WOOD**: Due to the GST. I just read it out to you.

**MR SPEAKER**: Mr Wood, direct your comments to the chair.

**MR WOOD**: Let's look at the impost on home owners. In 2002-03, rates income was $112 million, land tax was $40 million, conveyancing was $147 million—$299 million. Let's average out that conveyancing over all properties. For 120,000 properties at $299 million, taking into account all land tax, rates and conveyancing taxes, the average property tax on each ACT property was $2,400. That is just a statement of fact, contrary to what we are getting from the other side of the house, which is a lot of rhetoric, a lot of hyperbole and not very much fact at all.

I want to focus on the positives. I will do that quickly because I know that other people want to get into the debate. Let's look at some of the increased expenditure that we have brought about just in my areas of administration over a period of years: $6.87 million for disability services, $2.3 million for therapy services, $3 million for community housing, $3 million for affordable housing, $8.8 million new money for public housing to buy land assets, and $13 million for homelessness. That is the positive side of what taxes do for you and that is only a quick summary of some of the more significant ones. That was all new money. So the opposition's proposals here are just not supportable.

**MS TUCKER** (4.33): In the Public Accounts Committee we are actually looking at the question of the sustainability of our revenue base, which to a large extent overlaps with

this MPI, and I will not go into detail as we are going to have a fuller and better informed debate. I do not feel I am fully informed today, because we did not have much notice for this MPI.

Concerning this claim in the MPI that the ACT has a high and rising tax burden, the submission to the revenue inquiry from government seems to indicate that at least the "high" question is a bit debatable. According to the Commonwealth Grants Commission report on general revenue for 2002, the ACT ranked fourth out of the eight states and territories in "revenue raising effort", as it is termed.

The ACT revenue raising is above average, but it is the lowest of the five jurisdictions that are above the average on this score, so it was not high—at least, not on those 2002 figures. The ACT's ranking on stamp duty on conveyances at that time was 96.99 per cent. That is below the national average and is the third lowest of the jurisdictions.

What I want to talk about more today is the equity of the revenue base and whether the revenue is sufficient to meet the needs of the community. That, of course, always has to be part of any discussion about revenue. Many surveys have been done to determine what people are happy to pay and what they would like to see the money spent on. I do not have the details of those here.

Something has come out quite recently reinforcing the idea that people are comfortable about paying higher taxes if they have confidence in how the government is spending that money, particularly if it is going into things such as health and education. According to the desires and values of most people in the community, those are always underfunded by all governments.

I know the Liberals, and others, believe in small government and that the market will provide, but the evidence has not supported that. Even though there is enough of that evidence for it not to be even debated any more, there is still an ideological commitment to it by conservative governments and people around the world.

In fact, a smaller percentage of the population is becoming more wealthy, the trickle-down effect has not worked and a larger and growing percentage of the population lives in poverty or is suffering disadvantage. If we care about having an equitable society—one in which everyone has a reasonably equal opportunity to participate in society, receive good education and health care and have quality of life—we have to look at redistributing wealth in some way. That is what revenue and taxation is about.

I hear what Mr Smyth and his colleagues are saying, but I also often hear them say in this place that the Labor government is failing because it is not caring for vulnerable people or children at risk. Mrs Dunne spoke passionately about that at one point—also Mr Smyth on social issues on occasions. If you talk about removing the capacity for the recurrent funding of essential services, you also have to tell us where you think we do not need to spend money. Is it health care, homelessness, mental health, disability services, education, environmental protection, the aged, nurses? We need to hear that as part of this discussion as well.

**MS DUNDAS** (4.38): We are meant to be discussing the high and rising tax burden this government is placing on the people of Canberra, but all I have heard today from the

opposition is what sounds like the beginning of a campaign speech, with no substance about how to manage the taxes we place on the community, which are important to fund the services we demand.

Taxation is not there to punish people or to take away their hard-earned cash. It is to provide services for the common good that individuals cannot provide, such as schools, hospitals, roads, police, fire, emergency services, welfare and public housing. If we cut into taxes we cut into these services.

Core to what we need to discuss are the way the tax burden is spread among the community and the high tax burden we place on those who can least afford it. We have seen increased taxes hit those on low incomes, and we need to refocus the taxation system so that those who can afford to pay it do, supporting those who cannot.

The other concern is what we then do with the money we collect as taxes. It has been raised in a lot of discussion that the money we collect from taxes is not being spent in the way the community expects. Money has come in this year from the 2002-03 budget—$86 million extra in land sales and $24 million in stamp duty. The government has said this is a one-off, it is a boom and it is not recurrent.

We have yet to hear what they will do with this one-off surplus, as opposed to just keeping it there to make the bottom line look good. Some investment must be made to help those who are worse off in our community if we are going to make the ACT the place we all dream it will be, which is the most liveable of our societies.

We have already had some debates in this chamber about taxes that have been introduced over the past few years. We have had a debate about rate systems, stamp duty and paid parking. If we saw this money going back into areas where it benefits people—money from paid parking going into public transport, money from rates and stamp duty going into affordable housing—maybe the problems the community have would not be so great.

A lot of figures have been thrown about, by both sides of this house, relating to stamp duty. Stamp duty is the largest proportion of taxes collected by the ACT government. Whilst it is only a small proportion of the amount of money you put into paying for your house, it is a disincentive for those on low incomes and for those who are struggling to make ends meet. If the money collected through land taxes and rates were used to help these people possibly not pay that stamp duty and move into their own houses, the flow-on effects in terms of social wellbeing could be enormous.

I repeat my call to the government to look at how the revenue coming in is being allocated out and to remember that there are many people in this community who are having problems making ends meet and that housing is definitely one of the areas that need a great deal of attention.

**MS GALLAGHER** (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (4.42): I rise briefly to make a few comments, largely to support the comments of my colleagues here, but particularly those of Mr Quinlan when he referred to this as a very basic debate, a dumbing-down debate.

That is a fair accusation, and it is partly because the Liberals do not have any other campaign to run on at the moment, although I can see how tremendously interested they are in this matter of public importance—to the point that they have all left their seats. Their argument was very much along the lines: Liberals equal good; Labor equals bad. To give Mr Smyth the benefit of a bit more sophistication in the argument; perhaps it was: Liberals equal low-taxing, responsible financial managers; Labor equals high-taxing, high-spending, irresponsible financial managers.

Mr Smyth should give the ACT community acknowledgment of a bit more understanding of the issues. He has got to get with the program a bit and see that people understand why they have to pay taxes: they want services, which cost money. It is the government's job and the Assembly's job to make decisions about that.

It is rather unfortunate that this is the only thing that the Liberals can grab onto and run with. It is an age-old Liberal campaign; it was dreamt up 100 years ago that Liberals are good financial managers. Some of the fiascos that occurred during the previous government would lend some suspicion to that claim. Tomes have been written about the financial responsibility of the opposition when they were in government, and it was not that pretty, from my reading of it.

Mr Smyth also says that, because they are good financial managers—and this covers an area of my portfolio, Mr Deputy Speaker—they suppress wages. He said that it is responsible management to suppress wages. In fact, they could deliver wage outcomes—half of whatever CPI was running—and that is responsible financial management. They could also refuse to give award increases to the community sector, which is something this government is addressing. I guess that is financially responsible as well.

In the last week or so we have seen the socialists' friend on the other side, Mr Pratt, take a much more supportive approach to appropriate wage remuneration—very supportive, in fact. I am pleased to see it. I am looking forward to a submission from Mr Pratt on his complete support of the teachers' wage claim, which is 26.87 per cent, and on how he would be financially responsible and deliver that outcome to teachers.

It would be of interest to me because I would not mind delivering that outcome, if we could. I am certainly pleased to have his support. The debate today has been basic and has been based on an old campaign, one that the community is tired of and does not relate to. It simply is not true. I will finish on that point.

**MR SPEAKER**: The discussion is concluded.

## Civil Law (Wrongs) Amendment Bill 2003
### Detail stage

Proposed new clause 17A.

Debate resumed.

**MS TUCKER** (4.46): The Greens will be opposing this amendment. This is another example of an amendment seeking to deliver to insurance companies whatever they

request simply on the basis that they request it. The maximum award in the ACT for non-economic loss is no more than this in any event, so we are not looking at an evidence-based approach to the decisions we are making.

When this debate was going on this morning, the speaker before me was Mr Stanhope, and he was defending the government's performance in this area. Even though I am unhappy with what is happening here today, I want to acknowledge that up to this point Mr Stanhope had been resisting the corporate thuggery of the insurance companies. I believe he sincerely and genuinely resisted that for very good reasons: he understands that to do anything else is to undermine the fundamental rights of people in our community who are vulnerable and disadvantaged.

I see that he has now joined us and probably did not hear that. I was acknowledging, Mr Stanhope, that you have been struggling with the corporate thuggery of insurance companies. Even though I am disappointed with what is happening today, I think you are as offended by this as others of us in this place.

On the question of capping, every business limits its costs in terms of returns to shareholders, which, if you like, is the underlying goal of all business. That makes sense. Tort law, however, has not evolved simply to facilitate profitable business. There are real issues of justice and equity that ought to be at the forefront of our thinking.

Insurance companies are enjoying good business, and to limit entitlements for people who have a fair and justifiable claim to them, without any proof that the costs are impacting on premiums and in a context where slashing people's rights and entitlements is clearly not delivering lower premiums, is unacceptable. We will not be supporting this civil law amendment.

Question put:

> That **Mr Stefaniak's** amendment No 2 be agreed to.

The Assembly voted–

| Ayes 4 | Noes 9 | |
|---|---|---|
| Mrs Burke | Mr Berry | Ms MacDonald |
| Mr Cornwell | Mrs Cross | Mr Stanhope |
| Mr Pratt | Ms Dundas | Ms Tucker |
| Mr Stefaniak | Ms Gallagher | Mr Wood |
| | Mr Hargreaves | |

Question so resolved in the negative.

Clauses 18 to 21, by leave, taken together and agreed to.

Clause 22.

**MS DUNDAS** (4.52): I am seeking to remove clauses 22 and 23 from this amendment bill. I move amendment No 1 standing in my name (*see schedule 4 at page* ). I have a

number of consequential amendments, which would remove further sections of this bill if these clauses are defeated. I will speak to them all now in the hope of moving things along.

Clauses 22 and 23 are designed to prevent a lawyer from proceeding with an action where there is no reasonable prospect of success. This will limit the ability of people to bring forth test cases. Test cases are fundamental to the development of the common law system. I would like to provide the Assembly with some examples of test cases from Australia's history.

The nuclear test case against France established our right to live free of nuclear contamination. The 1982 case Koowarta v Bjelke-Petersen found for the first time that the Commonwealth could use its external affairs power to step into state affairs to include international treaties. The Tasmanian dam case of 1983, which prevented the damming of the Franklin River, was a legacy of this case.

Native title is a key area where test cases have succeeded, in a legal climate where a reasonable person would have to have concluded that there was no reasonable prospect of success. The Mabo case overturned the 200-year-old doctrine of terra nullius, and the Wik decision that followed it found that native title survived on many types of land where it was assumed, following Mabo, to have been extinguished.

More recently, we have had the tobacco test case, brought by Rolah McCabe, and the Bakhtiari judgment from the Family Court, which found the detention of child asylum seekers to be illegal. The plaintiffs and lawyers who argued these unpromising cases have done the community an enormous service, and our nation would be much poorer if they had been prevented from bringing these actions.

Test cases have also built our common law of negligence. In many landmark tort cases, like the original 1932 case of Donoghue v Stevenson and the 1984 case of Jaensch v Coffey, a reasonable person would have concluded that the action had no reasonable prospect of success. However, pursuing the cases gave the judges an opportunity to develop the law and formally recognise new types of harm and new approaches to viewing responsibility for wrongs.

I understand that the bill contains a provision in clause 118B (3) that would permit the courts to admit a course of action in the interests of justice where it does not satisfy the reasonable prospect of success test. But this is not a wholly satisfactory solution. The initial trial judge may be conservative and unwilling to find that the case should be pursued in the interests of justice. We are putting hurdles in the way of exploring these points of law. Under the current system, even if an initial trial court finds against the plaintiff and declares their course of action to be poorly founded, a higher court may grant leave to appeal the decision.

The rationale for the new "reasonable prospect of success" is to avoid tying up court resources, and time and resources of defendants, where there is not a strong case. As I said before, whilst we must talk about allocation of resources, the Democrats truly believe that the right of access to justice should be put first.

The common law is never fully comprehensive, and these test cases give judges and the community the opportunity to fully explore our law and to fill existing gaps, so that responsibility for injury is laid to rest on the right shoulders. The right of access to justice is fundamental. Justice is expensive, as is democracy. Neither should be abolished on the grounds of cost.

If we ask people to have faith in the law then they should be able to question and test that law; it is one of the fundamental rights that we have in this country. I am moving that these clauses be opposed so that ACT residents retain this fundamental right. I hope the Assembly sees merit in this call.

There have been recent reports in the media about cases that do not have a reasonable prospect of success being pursued by unscrupulous lawyers in an attempt to raise funds from their clients. Yes, this is a bad situation, but it does not mean that we should cut the provision completely out of our legal system when it has provided so many good outcomes for the people of Australia and of the ACT.

If we remove the right to challenge the law, to reassess the law or to test the law, then we are asking the people of the ACT to blindly give up the rights they currently have in relation to our legal system. I find that unconscionable and hence will be opposing these clauses.

**MR STEFANIAK** (4.58): We are not opposing this clause. About 12 months ago, we had a similar sort of argument, and we backed whichever of the crossbenchers was seeking to remove it then. Having looked at this clause and talked to a number of people about it, I think it clearly does make provision for a court, if it actually thinks there is some merit in it, to push a case forward.

That could become another Donoghue v Stevenson, or perhaps another Mabo—not that we are likely to get that in the ACT. In the case of Mabo I would have thought that Eddie Mabo and co had lived there for 300 or 400 years. Another old legal adage, possession is nine-tenths of the law, was probably equally as important as terra nullius. But you do need to run earth-shattering test cases like Donoghue v Stevenson, and there is provision here for a court to give that—

*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 STEFANIAK**: We are certainly prepared to go with the government on this one. As I said earlier in relation to one of the other matters where some quite legitimate concerns were raised by the Law Society, we will be looking at the clause pretty closely to see how it operates. There is a safeguard in there to ensure that some new provision, which would need to be run through the courts, to see if new law should be established is still capable of being done with this legislation.

**MS TUCKER** (5.00): We are opposing this clause as well. I am not aware of any cases in the ACT where this provision would have resulted in a significant saving for the court, plaintiff or defendant and which could not have been handled easily by the court or the

Law Society. It exists in this bill simply because the insurance companies chose to insist. It is not based on evidence, good law or even significant cost pressures.

After the debate last year, when the Liberal Party, to its credit, joined with me and the crossbench to block this provision, there was much exasperation in the government camp. It was discovered that we had done the dirty on the big insurance companies, who had understood we would mirror provisions in the New South Wales legislation. It was as simple as that.

The Law Society has taken a pragmatic view and, while very articulate in its contempt of this proposition, has recommended some minor changes to make the scheme more workable if the Liberal Party—as I understand it will—goes with Labor on this. I will move those amendments to give effect to those recommendations.

One can sometimes get too easily on the high horse of principle, but this is one situation where the principles have real impact on how our justice system works. In the debate last year, I quoted Tamar Hopkins from the Welfare Rights and Legal Centre and Peter Gordon from Slater and Gordon. I will remind you of what they said. After consulting with others in her field, Tamar offered these comments:

> We believe that this development will have a major impact on the capacity of individuals to bring negligence actions. There are few lawyers who will take the personal risk that a decision maker will determine a case with small chances of success is a public interest case. Public interest cases are often test cases, which by their very nature intend to push the law in directions not fully explored. They are thus inherently risky.
>
> Cases such as these include: stolen generations cases, asbestos, silicon breast implants, tobacco companies, McDonalds, Bropho etc. The risk in all of these cases and others is that the decision maker might not recognise their public interest value. The case may be ahead of its time. Would for example the snail in the ginger beer bottle case that is widely credited for creating the duty of care doctrine have in its time, passed the "reasonable prospects of success"?
>
> We do not believe that leaving the risk of personal loss to the solicitor open until the Court decides the case is a public interest case will allow public interest cases to be brought. The risks are too great that the court will not recognise the value of the case.
>
> Given the limited legal avenues available to the public, the legislature must be very careful not to block the creative expansion of the common law.
>
> The other concern to us is that before a person can put in a communication (complaint) to the International Human Rights Committee, under the optional protocol of the International Covenant of Civil and Political Rights, they must exhaust all domestic remedies. In some cases this may require appealing a matter all the way to the High Court. Government breach of its duty of care is an obvious avenue to begin these appeals. The possibility of success in these cases is by their very nature, risky. We doubt lawyers, risking personal loss, could take the chance, despite the importance and compelling nature of the case they are advising on.

Peter Gordon made the following comments on this insurance industry driven push towards tort law reform to the conference of community legal centres in September 2002.

> So while Raymond Jones, the President of the Insurance Council of Australia and head of QBE insurance, the insurer of asbestos manufacturing giant James Hardie, tells the media that the insurance industry will withdraw cover from the local pony club unless tort law reform is introduced, he is also telling shareholders, and I quote: "It is a fantastic environment. We are exceeding our budget in every region of the world in terms of rate increases on all classes of insurance."

That is from the *Financial Review*, August 2002. It continues:

> It reinforces my point that these moves limit the capacity of citizens and their legal counsel to access the court, and are driven by shareholder agendas rather than principles of justice.

In regard to the basic principles of access to the law that this provision will compromise, Peter Gordon had this to say:

> More importantly though the common law is a legal avenue for the citizen to challenge the exercise of power. For all its limitations, the common law is one of the few remaining legal methods by which a citizen can challenge the power, and decision making of an increasingly powerful State, itself increasingly beholden to corporate power.
>
> The private right of access to the courts by ordinary people, has fettered abuse of power by the government in fundamentally important ways. The conspiracy proceedings against Corrigan and Reith; the challenge over Tampa; the actions over police bashings at Richmond secondary college; the police strip search cases, are all examples.
>
> And that check on the abusive exercise of power by the State is not just the result of successful cases . . .
> • it extends to the state and big corporates knowing that the law is there;
> • and that there are lawyers out there . . . union lawyers, refugee lawyers, legal centre lawyers, civil liberties lawyers, who are prepared to use it.

I would have thought all these issues would be close to the heart and philosophy of the Labor Party. I will also quote Professor Desmond Manderson, an ANU graduate, now a Canada research chair in law and discourse at McGill University, Montreal. He said:

> So to limit court cases to success, and to define success as a judgment in damages, is to miss the point. One brings (some) cases
> (a) to change the law; or
> (b) to publicise the injustice of the present law; or
> (c) to publicise a corrupt or bad behaviour by the powerful.
>
> All of this might be stopped by this law.

Finally, when we debated this very issue last year, I asked the government to hold off until the mediation and mutual evaluation processes were in place and had been tested

and the court procedure modification, the stage 3 reforms, had been implemented. At least then we would have had evidence on which to base the decision. Unfortunately, this government has chosen not to wait.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.06): I would make a number of points in response to concerns that have been expressed about this provision. At the outset I would point members' attention to the existing section 257 of the Magistrates Court (Civil Jurisdiction) Act of 1982. We are talking here about the application of the reasonable prospects of success test in section 118D of the civil law act.

For the interest of members, I will read the provision that currently applies to the Magistrates Court in relation to civil matters. And the Magistrates Court currently provides, in section 257(1), the following:

> (1) If it appears to the court that a solicitor for a party to proceedings is responsible (whether personally or by an employee or agent) for costs in the proceedings having been incurred improperly or without reasonable cause, or having been wasted by undue delay or by any other misconduct or default, the court may, after having given the solicitor a reasonable opportunity to be heard—
>
> (a) direct the solicitor to repay to his or her client such of those costs as the client has been ordered to pay to any other party to the proceedings; and
>
> (b) direct the solicitor to indemnify any party other than his or her client against such of those costs as are payable by the party indemnified.

It is interesting to compare that with the section under consideration, 118D, which reads:

> (1) If the court in which an action on a claim for damages is set down for hearing considers that legal services were provided by a lawyer or a client on the claim, or in defence of the claim, without the claim or defence having reasonable prospects of success, the court may (on its own initiative or on the application of a party to the proceeding) make either or both of the following orders:
>
> (a) an order directing the lawyer to repay to the client (or to pay) all or part of the costs that the client has been ordered to pay to another party;
>
> (b) an order directing the lawyer to indemnify a party other than the client against all or part of the costs payable by that party.

The language is almost identical. Members need to be aware of the fact that the Magistrates Court (Civil Jurisdiction) Act 1982 provides precisely for what we are currently debating and what some members are currently opposing. We need to make the point that this is not a particularly radical new proposal that we are considering here. To some extent it simply mirrors what happens in the Magistrates Court in any event.

We have all read the *Canberra Times*, which just today by coincidence has the headline, "Disgraced former lawyer to face court." I do not know when he was disgraced, but the story reads:

> A disgraced former Canberra lawyer has been ordered to appear in the ACT Supreme Court tomorrow to be quizzed over the extent of his assets and the non-payment of a $448,000 court judgment. …
>
> The Roche brothers, who now live in Queensland, were ordered in April to pay Canberra lawyers Peter Glover and Peter Sheils, QC, $448,897 over the purchase by Watling Roche in 1998 of the law practice of Sheils and Glover.

This is the significant part:

> A punitive costs order was later added by Justice Ken Crispin because of the Roches'—

and I draw this to members' attention—

> manifestly groundless defence of the claim and imprudent refusal to settle the case for $400,000, plus costs.

We need to have regard to the language of Justice Ken Crispin in this particular case. He made a punitive costs order because of the Roches', the solicitors, "manifestly groundless defence of the claim and their imprudent refusal to settle the case". The law recognises what it is we are seeking to codify. As I say, this is not startling, it is not radical, it is not new. It is what the courts do in any event.

For the sake of the record and for the information of members—of course you know it is not new to the law; we have seen it as reported in the *Canberra Times* today—we can refer also to the case of Brendon Ewart William Kelson v David Syme & Co Ltd, ACT Supreme Court 87 (27 August 1998). I will refer to a part of that case relating to the issues we are dealing with here and the fact that these issues are grappled with and dealt with by courts. This is the finding of the judge:

> It was submitted by Mr Wheelhouse, who appeared for the defendant, that indemnity costs were awarded only in "clearly exceptional cases or very limited circumstances". In fact, the discretion has been described as "absolute and unfettered", though it is clear that it must be exercised judicially—

And he makes a few references for that.

> The exercise of this discretion has been said to be appropriate where there is "some special or unusual feature in the case to justify the court in exercising its discretion in that way"—

That is the case of Preston v Preston, and it has other references as well.

> Woodward J expressed the view, at 401, that it was appropriate to consider awarding costs on a solicitor and client or indemnity basis whenever it appeared that an action had been commenced or continued in circumstances where the applicant, properly advised, should have known that he had no chance of success, because in such cases the action could be presumed to have been commenced or continued for some ulterior motive or because of some wilful disregard of the known facts or the established law.

That is what we are doing. We are doing what the courts were codifying, including, in this particular piece of legislation, precisely what the law recognises as appropriate. We are simply codifying what has been expressed, by Woodward in this case, that it is appropriate to consider awarding costs:

> … whenever it appeared that an action had been commenced or continued in circumstances where the applicant, properly advised, should have known that he had no chance of success, because in such cases the action could be presumed to have been commenced or continued for some ulterior motive or because of some wilful disregard of the known facts or the established law.

That is what we are doing. The courts already recognise it. It is already possible for it to happen. It already happens. It has been done as recently as today in the ACT. What we are doing is incorporating that into the law to make it more certain.

Members today have discussed the very important issue of test cases and the need for test cases to be able to proceed. I agree absolutely; I have absolutely no issue with that. Indeed, in any real consideration of access to justice and the development of the law, it is important that there always be an opportunity for particular issues to be pursued. We recognise that.

We recognise it explicitly in section 118B, relating to the application of part 10.2. We go to the very point of circumstances where justice requires it, such as the need to pursue a potentially new course of action or a potentially new understanding. We need to allow the law to develop; we need to ensure that it does not stultify. Section 118B (3) is designed to achieve just that purpose. It says:

> … this part does not apply to a claim for damages if the court considers that it is in the interests of justice for the claim to be continued and makes an order to that effect.

That is what it is there for, and that is what it would achieve. These are provisions. Part 10.2 does not do anything particularly dramatic. It does not thwart the operation or development of the law. It is not startling, it is not radical and it is not to be feared. The government stands by this clause, and I commend it to the Assembly.

Question put:

> That clause 22 be agreed to.

**MR DEPUTY SPEAKER**: Members, please resume your seats for the vote. The question is:

> That clause 22 be agreed to.

*There being confusion concerning the result of the previous question, the Speaker, having ascertained it was the wish of the Assembly and in accordance with standing order 165, again put the question:*

> That clause 22 be agreed to.

The Assembly voted–

| Ayes 10 | | Noes 3 |
|---|---|---|
| Mr Berry | Ms MacDonald | Mrs Cross |
| Mrs Burke | Mr Pratt | Ms Dundas |
| Mr Cornwell | Mr Stanhope | Ms Tucker |
| Ms Gallagher | Mr Stefaniak | |
| Mr Hargreaves | Mr Wood | |

Question so resolved in the affirmative.

Clause 22 agreed to.

Clause 23.

**MS DUNDAS** (5.21): I will be opposing this clause, but I understand that Ms Tucker seeks to amend it.

**MS TUCKER** (5.21): I move amendment No 7 circulated in my name *[see schedule 3 at page 3092]*.

This amendment simply defines "reasonable prospect of success" more reasonably. Law is discourse and it really is about putting an arguable case. The bill at present defines "reasonable prospect of success" as a reasonable prospect of success. It would be all very clear in hindsight. An "arguable case" would be more easily and neutrally judged by the court. This wording was recommended to us by the Law Society.

I understand that the government has chosen to be suspicious, on these issues, of the view of barristers and solicitors who practise in the field. It seems fairly clear, however, that government has not consulted with the courts either, and it is they who would be making the decision on what would constitute a reasonable prospect of success. I refer to the argument I put in the previous debate that the point of taking a case to court can justifiably be to change the law, to publicise the injustice of the present law or to publicise corrupt or bad behaviour by the powerful.

I would have thought the Labor Party would be behind this. I listened to Mr Stanhope's arguments about the reasonable chance of success, and it is quite a different thing to be apprehended or asked to pay back costs when it has been determined that the management of a case by the legal person concerned was corrupt. But this is about determining up front and before the reasonable chance of success. For all the reasons I have already explained, I think that it is significant and it is different. That is all I will say on this one.

**MS DUNDAS** (5.23): Although it is my strong preference for clause 23 to be omitted altogether—even if it is amended, I will still oppose it—I believe that this amendment moved by Ms Tucker to create an understandable definition of the term of "reasonable prospect of success" is one that can be supported. Having this clause amended as Ms Tucker suggests would be preferable to having clause 23 passing in its current form.

I have found, as the Law Society and Ms Tucker did, the tautological definition of the term "reasonable prospect of success" rather strange, and I agree that a definition that refers to an "arguable case" is more satisfactory, if we are to have this term introduced into our civil laws.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.24): The government will not support the amendment, Mr Speaker, acknowledging that the Law Society has made strong representations that the common law already offers sufficient deterrence and punishment for cases that do not have reasonable prospects of success. The society raises the possibility of negligence claims against solicitors and the awarding of costs by the courts as illustration of the measures that should already ensure that only matters with reasonable prospects of success are pursued.

It needs to be remembered, though, that part 10.2 is essentially about ensuring that lawyers make relevant applications for relief. The provisions penalise lawyers who use a scattergun or an undisciplined approach to a case because that approach increases the costs of litigation for all the parties involved. The part is based on provisions in New South Wales, although we have wound them back somewhat. I should indicate that similar provisions to this also apply in the United States and have done for many years.

I acknowledge also that the Law Society expresses concern that lawyers would be required to certify that a matter had reasonable prospects of success prior to the setting of a hearing date for the matter. The complicating aspect that the Law Society raised in this regard is that a lawyer cannot always control when a matter is allocated to a hearing date. As the court may set any matter down for hearing if it chooses, a lawyer might be placed in the unsatisfactory position of vacating the hearing date or discontinuing a matter. Both those situations result in costs for the client and the potential of exposing the lawyer to a negligence claim.

The Law Society has suggested to the government a workable alternative, which the government has adopted and which is included in amendments that I will move: that the requirement placed upon the legal profession be that a lawyer should not sign a pleading unless the claim, defence or cross-claim has a reasonable prospect of success. This introduces the certification of the reasonable prospects of a matter at a much earlier and less problematic stage than the setting of a hearing date.

The Law Society also expressed reservation about the definition of "reasonable prospects of success", but the government continues to maintain that the proposed definition sets a lower burden for determining whether a lawyer had a proper basis for claiming the fact. The proposed definition does not look to the lawyer's belief about the material but allows lawyers to accept the material on face value.

In addition, the wording in the definition proposed by Ms Tucker is not as clear and concise as the existing definition and does not give sufficient direction for lawyers. The government's view, and the reason for our opposing Ms Tucker's amendment, is that the integrity of this section needs to be maintained. That can only be done through the retention of the original definition.

Amendment negatived.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.27): Mr Speaker, I seek leave to move amendments 3 and 4 circulated in my name together.

Leave granted.

**MR STANHOPE**: I move amendments 3 and 4 circulated in my name together *[see schedule 2 at page 2089]*. Amendment 3 amends clause 23 of the bill. The words "agree to, or allow a court to set, a hearing date for the claim" are replaced with the phrase "sign a pleading in relation to the claim". This amendment was recommended, as I have just indicated, by the ACT Law Society.

The Law Society was concerned that an obligation on a legal practitioner to certify that the case has reasonable prospects of success would be required before a hearing date is set. The Law Society recommended that a better approach would be to provide that lawyers cannot sign pleadings—for example, claim, defence or cross-claim—unless there are reasonable prospects of success. Changing the time for certification protects clients from incurring costs for litigation that may not proceed and from the potential of paying costs following a discontinuance.

Amendment 4 also amends clause 23 of the bill. The words "an action on a claim for damages is set down for hearing" are replaced with the phase "a pleading has been signed in relation to a claim for damages". Like the previous amendment, this alteration was also recommended to the government by the ACT Law Society. The society was concerned that an obligation on a legal practitioner to certify that a case has reasonable prospects of success is required before a hearing date is set. The society recommended that a better approach is to provide that lawyers cannot sign, et cetera, unless there are reasonable prospects of success. Changing the time, once again, protects the client from incurring the costs of litigation.

Question resolved in the affirmative.

Amendments agreed to.

**MS TUCKER** (5.29): I move amendment No 8 circulated in my name *[see schedule 3 at page 3092]*. This amendment makes it clear that there are incidents in trials that cannot be foreseen and that an arguable or even winnable case can disappear very quickly once you are in court. Once again, you have to wonder if the government and its public servants have spoken to the courts on this issue or if the principle of doing business with business has so overtaken their thinking.

Question resolved in the negative.

Amendment negatived.

Question put:

That clause 23, as amended, be agreed to.

The Assembly voted—

| Ayes 10 | | Noes 3 |
|---|---|---|
| Mr Berry | Ms MacDonald | Mrs Cross |
| Mrs Burke | Mr Pratt | Ms Dundas |
| Mr Cornwell | Mr Stanhope | Ms Tucker |
| Ms Gallagher | Mr Stefaniak | |
| Mr Hargreaves | Mr Wood | |

Question so resolved in the affirmative.

Clause 23, as amended, agreed to.

Clauses 24 to 36, by leave, taken together and agreed to.

Clause 37.

**MS DUNDAS** (5.34): Mr Speaker, I wish to let the Assembly know that there are a number of clauses that I would have been opposing if clauses 22 and 23 had been removed from this bill. As they are now in, it is a waste of everybody's time for me to continually say that I am not happy about this but, just one more time, I am not happy about these going into our law books.

Clause 37 agreed to.

Clause 38 agreed to.

Clause 39 agreed to.

Clauses 40 and 41, by leave, taken together and agreed to.

Clause 42.

**MS TUCKER** (5.36): I move amendment No 9 circulated in my name *[see schedule 3 at page 3092]*.

This amendment simply ensures that traffic accidents involving horses that would presently be covered by existing universal third-party insurance remain covered under this act. As far as I am aware, the number of accidents involving cars and horses in the ACT is not so great as to force up public liability insurance for horse-riding businesses or eat away at the affordability of third-party insurance overall. I understand that new insurers are moving into the public liability market as the panic of the last few years settles down. There is no need to hand these businesses even more special allowances to ensure their profits.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.37): Mr Speaker, the government will oppose the amendment. The government regards the amendment as not necessary and believes that it serves to confuse the scheme. If a car driven negligently hits a horse and injures a rider, the liability of the driver is not diminished by the proposed amendments. This is because, under section 3 (1), the liability that is diminished is that of the equine activity sponsor or like person, which is peculiar to the inherent risk of equine activities.

In the case given by Ms Tucker in support of the proposed amendments, the risk arises not because of an equine risk but because of a motor vehicle risk. The amendment muddies the water. Horses do not carry compulsory vehicle insurance. Arguably, the amendment might serve to transfer the risk of an accident caused by negligence on the part of a horse rider to the equine activity sponsor. There is no pool of money here provided by the universal third-party insurance scheme. There is simply an opportunity to again sheet home the cost to a person off stage who has the deepest pockets. The provisions contained within the bill provide an adequate scheme for determining whether liability should extend to such a person.

**MS DUNDAS** (5.38): I will be supporting the amendment. We have had some discussion already today about the current state of our third-party scheme and how it is, I believe, operating satisfactorily. There is no need to have its operation restricted, as it would be if this bill was left unamended.

Amendment negatived.

Clause 42 agreed to.

Clauses 43 to 46, by leave, taken together and agreed to.

Clause 47.

**MS DUNDAS** (5.38): It is a consequential opposition.

Clause 47 agreed to.

Clauses 48 to 53, by leave, taken together and agreed to.

Clause 54 agreed to.

Clause 55 agreed to.

Clause 56 agreed to.

Clause 57 agreed to.

Clause 58.

**MRS CROSS** (5.40): I move amendment No 2 circulated in my name *[see schedule 7 at page 3095]*.

Mr Speaker, there is a need to allow the courts discretion to extend the time available for plaintiffs when there is a situation that is out of control, or out of the control of the plaintiff. It is plainly unfair and unjust if they cannot proceed. There are classic examples of this occurring. Unfortunately, there are some in the legal profession who are not brilliant, and some of these individuals do cause problems. Fortunately, those in the chamber this evening are not part of that group.

The lack of action by lawyers, or the illness of lawyers, can lead to the plaintiff's being unable to lodge a suit through no fault of their own. If your lawyer is not dealing with your case as a matter of priority, you may find that your time has run out and your compensation will not get a hearing.

This amendment simply tidies up a very confused subsection. There is the possibility that people would fall between the two systems unless we change part A to a definite time, such as 1 July 2006. This allows those who had an incident in 1998, for example, a further year to lodge, and it allows those who now have an incident up to 2006, which is their entitlement under the new regime.

Without this amendment there will be people who are unable to apply for compensation as of 1 July this year simply because of the words "whichever of the following periods ends first". This amendment solves that problem.

**MS TUCKER** (5.45): The Greens will support this amendment. It is sloppy and unfair to retrospectively chop people's rights to apply for compensation, and it is particularly unfair to do so without warning. It would be easy to draft the bill so that did not occur. We saw this sort of approach from Gary Humphries, I have to say, when the Liberals were in government—the compensation legislation for the victims of crime comes to mind. I am sorry to see that approach in this one.

**MS DUNDAS** (5.45): I also will be supporting this amendment. I do accept the principle of limitation periods for actions, but I think the way that it is put forward to us in the government's original bill is quite harsh and makes no provision for extending the deadline.

After an accident, some people do suffer quite serious psychological impacts, and the effort of recovering from serious physical injuries can be all-consuming. Without a sufficient level of mental robustness, the idea of launching a court action can be quite daunting. I believe that this amendment makes it fairer for people. They have more time to consider their actions and the courts are then able to see justice done to all the people who have suffered injury caused by the wrongdoing of another.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.46): The government opposes the amendment, Mr Speaker. The government has—and I must say, reluctantly—removed the court's discretion, and it did it deliberately to allow claims out of time in relation to adults. The bill was designed deliberately to force adults to commence actions at an early stage or to lose the right to commence action. It should be noted, however, that the government is not removing the protections enjoyed under statute by those who have a serious mental disability. Time does not run while a person has such a disability.

As I say, the government took this step reluctantly, but there were two compelling reasons for the approach that we adopted ultimately. Disputes are best heard early, and insurance prices require immediate cost feedback. Three years is a relatively long interval of time. It requires us, for instance, to reflect on what we were doing 1,000 days ago. Three years is a long time to hold a recollection of an event in mind. Time dims memory; time erodes the value of evidence. If an action is taken five, 10 or 20 years after the event, serious injustice can occur. Not only does memory start to dim, witnesses move on or disappear, and evidence becomes more difficult to discover or is lost.

In one recent ACT situation, the defendant was unable to locate an insurance policy that would have covered the event from many years earlier. Some argue that justice is only ever rarely served if the legal dispute is heard within the social context in which it arose, with both parties having access to people with fresh recollections of the event. This is not always the case; sometimes, as with children, we need to balance the slow disappearance of the reality of the past with the social need to protect the interests of a child. The argument in relation to an adult does not have to deal with the same social need.

From a social perspective, there is another trade-off forced on us by insurance products. The price of an insurance product must be set on the basis of recent relevant cost information. If cost information is delayed, prices do not properly meet the risk. Insurance policies may be set at too low a level; where insurers make insufficient provision for cost, insurance companies collapse.

It might be asked whether insurance companies are not part of the cure but part of the problem. Perhaps we should be considering alternatives to insurance companies in any event. This is a significant reduction in the statute of limitations that applies here in the ACT. The government took its position. It has adopted essentially those provisions that apply in Victoria.

Indeed, that is consistent with moves that have now been made nationally in relation to times being made within statutes of limitations running. We deliberately took a decision in relation to adults, with the exception of people with a mental disability, that three years did provide sufficient time and did meet the aims that we were seeking to meet in moving the ACT to the existing Victorian circumstance.

**MR STEFANIAK** (5.49): I take a very similar position to the Attorney, in that I think Mrs Cross's amendment has considerable merit. It was certainly somewhat difficult not to accept it, because I think there are some very good points raised in it. The Attorney has put quite well the reasons the government has gone down this path, why there is a need for consistency with other states, the type of crisis we find ourselves in and the fact that, invariably, it is preferable if you can take an action early.

I would raise one further point on that. I note that, elsewhere in this legislation, liability may be decided early and then those involved may take some time to wait for an injury to calm down and stabilise. That might get around some of the problems that this particular clause causes and make the departure from what has been the law for some time.

The points raised about why we must go down this path are compelling in the circumstances but, for someone who has grown up with the six-year rule for adults, as well as for anyone else, it is a bitter pill to swallow that we are making what is a substantial departure from the law. I do note, however, that there are some lawyers who are slack and there are things that happen that people should be vigilant about. However, it is much more common now than it was, say, a decade ago for people to be quite prepared to sue professionals for their negligence. That, of course, includes lawyers. It is obviously the ultimate action anyone can take.

Some of these points were raised by Mrs Cross and, indeed, were made very ably by Mrs Moore when she spoke to me about this. So, with some reluctance, I accept the reasons the government has gone down this path. I think in all the circumstances it is necessary, but in some ways it is a rather sad step to have to take.

Question put:

> That **Mrs Cross's** amendment No 2 be agreed to.

The Assembly voted—

| Ayes 3 | Noes 10 | |
|---|---|---|
| Mrs Cross | Mr Berry | Ms MacDonald |
| Ms Dundas | Mrs Burke | Mr Pratt |
| Ms Tucker | Mr Cornwell | Mr Stanhope |
| | Ms Gallagher | Mr Stefaniak |
| | Mr Hargreaves | Mr Wood |

Question so resolved in the negative.

Amendment negatived.

**MR SPEAKER**: I am reminded you have a further amendment on this pink sheet to clause 58, Mrs Cross.

**Mr Stanhope**: On a point of order, Mr Speaker, parliamentary counsel has made an error. This is actually my amendment.

**MR SPEAKER**: If the Chief Minister were to seek leave to move the amendment circulated in Mrs Cross's name, he could move it. The chair is informed that there has been an error and an amendment circulated in Mrs Cross's name is a government amendment. Is that right?

**Mrs Cross**: There was an amendment that I did not move, Mr Speaker. Earlier, when I went to move something that I was going to withdraw, I was told I did not have to withdraw it because it had not been moved, so I thought I would just stay silent.

**MR SPEAKER**: We are dealing now with clause 58 of the bill and I have in my hand an amendment on a pink sheet, which I am now informed is actually intended to be a government amendment on a pink sheet.

**Mr Stanhope**: Mr Speaker, might I just address the matter?

**MR SPEAKER**: Yes.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.58): There is a difficulty and I wonder if we might just defer consideration of this for two minutes until perhaps we have dealt with the other matters. I will have a quick chat.

I have a concern. As I am advised, the matter was drafted by parliamentary counsel for me. Parliamentary counsel accidentally attributed it to Mrs Cross and Mrs Cross in fact circulated it, so I have not actually signed the amendment in circulation. Could we just deal with the other matters in the bill? Would it be possible to come back to this before we complete the bill for this evening so I can talk to my officials?

**MR SPEAKER**: At the conclusion of the detail stage of the bill we can recommit clause 58, deal with this amendment at that point and trust that you will have the matter sorted out by then.

**MR STANHOPE**: Thank you. I just need to have a quick discussion.

Clause 58 agreed to.

**MR SPEAKER**: We can recommit clause 58 at some later time.

Proposed new clause 58A.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.01): Mr Speaker, I move amendment No 5 circulated in my name, which inserts a new clause 58A *[see schedule 2 at page 3089]*.

Mr Speaker, amendment 5 inserts clause 58A into the bill. Clause 58A replaces the existing section 30 (3) of the Limitation Act 1985. The substituted subsection inserts a new subsection (3) (b), which provides that section 30 does not apply to causes of action to which 30B applies. Section 30B, Mr Speaker, is a special provision in relation to children concerning claims relating to health services.

Proposed new clause 58A agreed to.

**MR SPEAKER**: I will just say to members that the well-oiled machine feels as though it might come to a halt if all of the arrangements are not in place to deal with these amendments. I would ask staff, officials and members to make sure that everything is sorted out as we get to it.

Clause 59.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.02): Mr Speaker, I move amendment No 6 circulated in my name *[see schedule 2 at page 3089]*.

Mr Speaker, amendment 6 amends clause 59 of the bill. The amendment rectifies an incorrect citation of an act, so that the new section 30A (1) (b) properly refers to the Civil Law (Wrongs) Act 2002.

Amendment agreed to.

**MR STEFANIAK** (6.03): I move amendment No 3 circulated in my name *[see schedule 1 at page 3088]*.

This would amend subsection 30A (7) on page 71, which states at present:

> Noncompliance with a requirement of this section by the plaintiff does not prevent the plaintiff from bringing a proceeding in a court for damages but, unless the court is satisfied there is reason to excuse the noncompliance, damages must not be awarded in the proceeding to allow or compensate for medical, legal or gratuitous services provided to the plaintiff before the day the proceeding began.

My concern is with the word "reason". I suppose one could say to have "reason" means it should be a good reason, but it is unclear. The reason would have to be a compelling one for a court to actually grant that type of exemption, and this is a test normally applied in similar cases. To make it far clearer, and to stiffen it up a bit, I propose inserting the word "compelling" before "reason".

**MS DUNDAS** (6.04): Clause 59 is about limiting compensation payments to children in the instance where their parent or guardian is remiss in giving notice to affected parties of a pending legal action. This clause, in effect, punishes children, who cannot help themselves.

The only glimmer of humanity in this clause is the provision granting a discretion to the court to waive the application of the clause if there is a reason for the parent or guardian's noncompliance. To upgrade this from discretion to having to have a "compelling reason" is to set the bar higher. As a consequence, there is a greater risk of children losing compensation for those medical costs incurred before proceedings begin.

I believe that this amendment moved by Mr Stefaniak makes what is already a very bad part of law even worse, so I will not be supporting his amendment.

**MS TUCKER** (6.05): I agree with Ms Dundas absolutely on this, and I note there was no word of children in Mr Stefaniak's speech. It is interesting how we sterilise what we are actually doing through the use of legal language. With this amendment the Liberal Party proves again that it is even more the friend of business than the Labor Party is now.

It is a grotty reverse option with flexibility and individual circumstance—and human rights, I would add—being sacrificed. Not only must the court accept the reason for a parent or guardian being tardy in taking up an action on behalf of their children; the reason must be compelling. I am sure Mr Stefaniak and his friends have been

overwhelmed with evidence as to the extraordinary costs that would be imposed on our society if this mean-spirited amendment was not accepted. I oppose it.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.06): I was inclined to accept the amendment on the basis that it essentially makes no earthly difference. The court will always find a compelling reason—I think that is in the excellent drafting that is included in the government's bill here.

The draftspeople used the word "reason" and did not include the word "compelling" before the word "reason" probably because they thought it did not add anything. The court will always find a compelling reason; it is not going to find just a bit of a reason, a partial reason, a maybe reason. The way courts operate, reasons are always compelling reasons.

The government had proceeded on the basis that this was simply stating the obvious, essentially, and had no objection to it. Having informed Mr Stefaniak that that was our position, I will maintain it. However, I will take further advice on this, Bill, having regard to the strength of the opposition of the Greens and the Democrats. We will agree now, but I will have a further think about it.

Question put:

> That **Mr Stefaniak's** amendment No 3 be agreed to.

The Assembly voted—

| Ayes 10 | | Noes 3 |
|---|---|---|
| Mr Berry | Ms MacDonald | Mrs Cross |
| Mrs Burke | Mr Pratt | Ms Dundas |
| Mr Cornwell | Mr Stanhope | Ms Tucker |
| Ms Gallagher | Mr Stefaniak | |
| Mr Hargreaves | Mr Wood | |

Question so resolved in the affirmative.

Amendment agreed to.

Clause 59, as amended, agreed to.

Proposed new clause 59A.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.11): I move amendment No 7 circulated in my name *[see schedule 2 at page 3089]*.

Amendment 7 inserts new clause 59A into the bill. Clause 59A will add a new section 30B into the Limitation Act 1985. The ambit of section 30B is the establishment of a

special provision in respect of children concerning claims relating to health services. The amendment was requested by the ACT branch of the Australian Medical Association.

The amendment is based on the statute of limitations adopted in Victoria, which for straight-out injury cases limits the commencement of actions to six years from the date of the incident, and for cases where symptoms do not appear for some time, six years from when the symptoms first appear but no more than 12 years from the date of the incident claimed to have caused disease or disability. The 12-year limit can only be extended by the court in the interests of justice. In determining whether the court considers the interests of justice, the court will be required to consider the expert medical evidence, along with other evidence.

Subsection (6) clarifies that section 30B applies to a cause of action that arises on or after 1 July 2003. Under section 30B (7), if the cause of action arose prior to that date then the cause of action is not maintainable after the first to occur of the periods found in paragraphs (a) and (b). Paragraph (a) is the period that would apply to the cause of action under section 30B. If section 30B applied to the section, the period in paragraph (b) is the limitation period that applied to the cause of action before 1 July 2003.

**MS DUNDAS** (6.13): I will opposing this new clause. I believe that new section 30B is the most retrograde of the set of provisions proposed by the government to change the Civil Law (Wrongs) Bill. In the in-principle bill, damages payable to compensate for an injury to minors can be reduced if a parent or guardian fails to inform affected parties of the possibility or likelihood of a tort action. But it appears that the government is not content with this. They want to erode the long-standing rule that the limitation period for minors does not commence running until a minor has reached adulthood. The reasoning behind this rule is obvious. Children cannot commence their own legal actions and, of course, this argument is as strong now as it was before the recent insurance crisis.

Different laws apply to people under the age of 18 and they should have the opportunity to take action when they are legally an adult and can make legal decisions for themselves. Although most parents are vigilant in seeking justice for their children when an injury is caused, there are some who have lives that are too chaotic or, for other reasons, they do not want to pursue a course of legal action. Language barriers or disability may prevent a parent pursuing a claim on behalf of their child. If this bill is passed, some children may be severely disadvantaged. The interests of minors should not be overridden in the interests of increasing certainty for medical practitioners and their insurers.

So I seek the support of this Assembly in voting against this amendment. We have been having a debate for a while about the control that insurance companies that represent our doctors have over this government, and unfortunately this has resulted in this amendment being put forward by the government. It is a retrograde amendment, it will not make the situation better for our children, and we have no evidence that it will make the insurance situation better for our doctors.

I find this amendment put forward by the Chief Minister quite harsh. It impacts on those who are very vulnerable in our community—those under the age of 18; those who are children—and, hence, I cannot support it.

**MS TUCKER** (6.16): I agree with the principle that Ms Dundas is standing up for and obviously I have an amendment as well that tries to ameliorate the consequences. I understand what the government is doing in this very difficult situation. If Ms Dundas were successful in opposing this new clause the consequence would be that insurance companies would argue that every incident relating to birth and, indeed, after birth would be a potential negligence case for 18 years, and that it is likely doctors and anaesthetists would be required to pay substantial insurance premiums for 18 years after they retire. So if we were successful in knocking off this provision we would almost certainly be discouraging most paediatricians and anaesthetists from practising in the ACT.

Part of the problem rests with the Commonwealth government for only allowing medical indemnity insurance policies on a claims-notified basis. Previously some policies described as claims-made policies would give practitioners coverage for all incidents relating to their activities, even if the claims emerged at a later date. Unfortunately, as that form of policy is no longer available, some control over statute of limitations, even as applied to children, is important in this climate. It is for that reason that I think we cannot really oppose this clause. But I urge Ms Dundas and the Assembly to support my amendment to the Limitation Act, which will more broadly give to plaintiffs the right to pursue a case in exceptional circumstances.

**MR SPEAKER**: Ms Tucker, did I hear you say that you had an amendment to this clause?

**MS TUCKER**: No. My next amendment deals with this issue.

**MR STEFANIAK** (6.17): The opposition will be supporting the government. I note that the Attorney has had some detailed discussions with the medicos. One of the biggest problems which doctors have mentioned to us is the old situation of being liable for claims 24 years after the event. That in itself was given to me as one of a number of reasons why doctors have just thrown up their hands and left practice. It does cause a real dilemma. This is all about striking a balance. I do not think anyone is going to be particularly happy. I note the Attorney has worked this out with the doctors and, again, we have to be consistent with other states in all this.

Proposed new clause agreed to.

Clause 60.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.18): I move amendment No 8 circulated in my name *[see schedule 2 at page 3089]*.

Mr Speaker, amendment No 8 amends clause 60 of the bill. Clause 60 will add sections 36 (5) and 36 (6) to the Limitation Act 1985. Section 36 (5) provides that section 36 does not apply in relation to a cause of action to which section 16B applies. Section 16B applies to a cause of action for claims for damages for personal injury other than causes of action covered by section 16A.

Section 36 (5) also does not apply to part 3.1 of the Civil Law (Wrongs) Act 2002, which deals with death caused by a wrongful act or omission. Section 36 (6) states that section 30 also does not apply in relation to the period mentioned in section 30B (2), which is the special provision in relation to children concerning claims relating to health services.

**MS DUNDAS** (6.20): I put on the record that I am also opposing this amendment, as moved by the Chief Minister. It is a consequential amendment to the clauses we just voted on and I am still unhappy about those, too.

**MS TUCKER** (6.20): I move amendment No 1 circulated in my name *[see schedule 6 at page 3094]*. This amendment amends Mr Stanhope's amendment No 8.

The point of this amendment is to give the court power under exceptional circumstances to hear a case in the interests of justice. The strength of our legal system is that it focuses on justice and on equity. While the statute of limitations rightly limits people's options in most circumstances, there are occasions, such as the Voyager incident, where the truth of a situation emerges very slowly.

With fairly short and impermeable barriers in time, as this bill establishes, the incentive will always be there to limit costs by stringing plaintiffs or potential plaintiffs along until the matter is closed. In that situation, under this amendment the interests of justice and the exceptional circumstances would open the possibility for action to be taken.

**MS DUNDAS** (6.21): Mr Speaker, as I just said, I would have preferred the new clause to be entirely defeated, but I do commend Ms Tucker for this amendment. It only seeks to undo the harsh restriction in the limitation periods for adults and minors that the government seeks to incorporate into the Civil Law (Wrongs) Act. It also seeks to provide a general discretion to the court to waive limitations in exceptional circumstances in the interests of justice.

Because there is the requirement of exceptional circumstances, I cannot see this provision being used so often. But it significantly increases uncertainty for insurers. I think the benefits to particular individuals could far outweigh the slightly greater risk to insurers that would arise from this amendment. So I am happy to support it. I think it is a good amendment and I hope the Assembly also supports it.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.22): Mr Speaker, the government opposes the amendment. The argument is, of course, the same as the argument which related to the amendment proposed earlier in relation to extending the statute of limitations as it applies to adults.

These are difficult issues—there is no doubt about that. A deliberate decision has been taken by the government to reduce the statute of limitations applying to adults to three years. Acknowledging the different circumstance or situation in which children find themselves, the government has taken a deliberate decision to reduce the statute of limitations applying to children for straight-out injury cases to six years from the date of the incident that caused the injury; and in cases where symptoms do not appear for some time, six years from when the symptoms first appear but no more than 12 years from the

date of the incident claimed to have caused the disease or disability. The 12-year limit can be extended by the court in the interests of justice. In determining whether the court considers the interests of justice, the court will be required to consider the expert medical evidence, along with other evidence.

What the government has provided for is that in a straight-out injury case a statute of limitation of six years will apply, which will commence from the date of the incident that caused the injury; in other cases where these symptoms may not appear for some time, six years from when the symptoms appear but within 12 years; and in circumstances where we are dealing with symptoms that, for whatever reason, may not have appeared or become apparent within 12 years—say a disease that is not necessarily apparent—then, if the interests of justice so require, that period can be extended by the court.

Essentially, bearing in mind the way the courts operate and these matters are dealt with, the amendment proposed by Ms Tucker simply renders almost meaningless the application of a fixed term statute of limitations. It actually means there is no certainty. This provision is all about achieving certainty in relation to the commencement of actions. This is the provision that was negotiated. It is essentially at least the average of statute of limitations applying everywhere in Australia. This is the Victorian provision; we have picked it up straight out of Victoria.

There are other provisions—for instance, that applying in New South Wales. They are all different. Every state and territory now essentially has a different set of limitation periods. The ACT has the same as Victoria. They vary. Some are far more stringent than this. This is not necessarily the toughest of the lot. I think Tasmania has that honour—a straight-out three years for everybody, I think. There is no mucking around—three years if you are an adult; three years from the date of injury if you are a child in Tasmania; three years from the development of symptoms. That is how they have done it in Tasmania—three years for everybody. Every state and territory is doing it differently. These are judgment calls. We chose Victoria, thinking that it was perhaps less bad than some or many of the other possibilities.

Ms Tucker's amendment, which, of course, I have enormous sympathy for and which, if I were on the crossbench, I would have moved myself, simply flies in the face of the scheme.

**Ms Tucker**: And that is what I would be doing if I was there.

**MR STANHOPE**: That's right. If you were sitting here, Ms Tucker, as a person responsible to the whole territory and all the people of the ACT, you would be here making this speech that I am making.

Question put:

> That **Ms Tucker's** amendment No 1 to **Mr Stanhope's** amendment No 8 be agreed to.

The Assembly voted—

| Ayes 3 | Noes 10 | |
|---|---|---|
| Mrs Cross | Mr Berry | Ms MacDonald |
| Ms Dundas | Mrs Burke | Mr Pratt |
| Ms Tucker | Mr Cornwell | Mr Stanhope |
| | Ms Gallagher | Mr Stefaniak |
| | Mr Hargreaves | Mr Wood |

Question so resolved in the negative.

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

Clause, as amended, agreed to.

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

Clause 58—recommittal.

**MR STANHOPE** (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (6.31): Mr Speaker, in accordance with standing order 187, I move:

> That clause 58 be recommitted.

Question resolved in the affirmative.

**MR STANHOPE**: Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 9 at page 3095]*.

Just very briefly, Mr Speaker: this amendment substitutes the following words in proposed new section 16B (4):

> (4) If the cause of action arose before 1 July 2003, the cause of action is not maintainable if brought after the end of whichever of the following periods ends first:
>
> (a) the 3-year period mentioned in subsection (2) that would apply to the action if the cause of action arose on 1 July 2003;
>
> (b) the period that would have applied to the cause of action apart from this section.

Mr Speaker, this amendment simply provides a greater degree of certainty to the commencement of operation of the statute of limitations post-1 July 2003.

Amendment agreed to.

Clause 58, as amended, agreed to.

Question put:

That this bill, as amended, be agreed to.

The Assembly voted—

| Ayes 10 | | Noes 3 |
|---|---|---|
| Mr Berry | Ms MacDonald | Mrs Cross |
| Mrs Burke | Mr Pratt | Ms Dundas |
| Mr Cornwell | Mr Stanhope | Ms Tucker |
| Ms Gallagher | Mr Stefaniak | |
| Mr Hargreaves | Mr Wood | |

Question so resolved in the affirmative.

Bill, as amended, agreed to.

## Tertiary Accreditation and Registration Bill 2003

Debate resumed from 3 April 2003, on motion by **Ms Gallagher**:

That this bill be agreed to in principle.

**MRS BURKE** (6.36): Mr Speaker, I would firstly like to thank the minister, Katy Gallagher, for her forbearance in relation to the adjournment of this bill earlier in the week, and also to the members of the crossbenches for their consideration. As I explained to the minister and crossbench members, I was concerned that some major private registered training organisations in the ACT were initially unsure about the consultation process and the full content and intent of the bill. I am pleased to report to this Assembly that those matters have now been resolved and I have outlined to the minister the views expressed to me in relation to those matters.

Whilst it was never my intention to be obstructionist or to stall the implementation of this bill, it has to be my role as a member of this place to fully satisfy myself that all stakeholders are happy with the process and the bill as a whole. Otherwise, I believe I would be remiss in my role as a legislator and a member of this house.

On another matter, I understand that earlier today the minister tabled some minor amendments to this bill and the Vocational Education and Training Bill to address some consistency issues in relation to dates, and I thank her for that. All members should have those in front of them.

Mr Speaker, the Tertiary Accreditation and Registration Bill 2003 provides for revised and updated vocational education and training and higher education legislation, and fully supports and underpins the aims and aspirations of the Australian quality training framework. I am particularly supportive of changes that move our vocational education and training sector forward in a positive and constructive way. I have no reason to believe that any contentious matters come to the fore at this time. In fact, a big positive is that the bill will see the deregistering of any poorly performing training organisations.

Consultations with providers in the sector have shown that they have certainly not been negative about the proposed bill. In fact, they would be silly to knock back this proposal. I have not had any concerns put forward to me and I commend the bill.

I am heartened by the extent of national cooperation that has occurred during the consultation process. In order to keep pace with the ever-changing and dynamic nature of vocational education and training, it is important to remember that the other important group covered by this bill is, of course, the non-university higher education sector. Under the bill this sector will have nationally agreed protocols.

The bill, as the minister has told us, provides for compliance audits of all registered training organisations, and provides a process for them to gain national recognition once registered here in the ACT. It is again worthy of note that the bill covers an interstate university seeking to set up in the ACT and also a foreign university seeking to deliver university courses in the territory.

Mr Speaker, as our city grows it is important that we are ready and prepared with all legislative bases covered, particularly in something as important as education. It is a long and detailed bill that has been in the making for quite some time. It is a bill that reflects the spirit of national cooperation, and I commend the work of Minister Gallagher and Minister Corbell, who I think probably would have had some involvement, too. I would also like to acknowledge the work of many people—the Australian National Training Authority, the Department of Education, Science and Training; all the people who attended the many workshops; the ACT department of education; and, as I have said, Minister Corbell and, latterly, Minister Gallagher.

I applaud this integrated approach to both vocational and non-university providers of education and training in the ACT. After all, the people who will most benefit from all this hard work are the end users, and this in turn can only benefit the broader community as we continue to pursue improved quality assurance for education and training. The Liberal opposition are happy to support this bill.

**MRS CROSS** (6.40): Mr Speaker, I will also support this bill and I commend Ms Gallagher for introducing it. The Tertiary Accreditation and Registration Bill 2003 will bring the ACT into line with the Australian quality training framework. As Ms Gallagher has indicated, this bill is designed to ensure consistency in the accreditation of courses and the registration of providers. In fact, this has been the topic of many discussions in the education arena for years.

With this bill, along with the one that we will debate next week, I hope that the government is ensuring both high standards and consistency in accreditation within the ACT and across state boundaries.

The importance of education to our society is unquestioned. Horace Mann said, "Education, beyond all other devices of human origin, is the great equaliser of the conditions of men—the balance wheel of social machinery." Similarly, Benjamin Disraeli espoused the importance of education in proclaiming, "Upon the education of the people of this country, the fate of this country depends."

Education is the engine that drives society forward, thus it is up to the government and to us as legislators to ensure that standards of education are maximised and that standards are always increasing. Interestingly, though, Mr Speaker, the standards of education are often neglected in the drive to cover the curricula and finance the operation. This is particularly the case with on-the-job training and vocational education. The lack of a general nationwide accreditation system for on-the-job training has meant that standards of this training have varied greatly, and sometimes this has left a great deal to be desired. It is often assumed anyone can be a plumber, a builder or an electrician.

The Tertiary Accreditation and Registration Bill 2003 will ensure that a minimum standard is in place across all levels of higher education, from vocational and on-the-job training to universities. Ms Gallagher is to be applauded for introducing such legislation and ensuring that the ACT maintains its good position on the education side of training.

However, this is not enough. The government must go further. The government has laid the groundwork to increase the standards of trades and higher education. They have ensured that a minimum level of training is acquired. The government must now embark on a campaign to ensure that increasing numbers of people enter these career paths. This can only be done with some positive and demonstrative action. Public advertising is really important and can be used by the government to promote various trades where we have shortages of skilled people.

There can be a concerted effort to increase the prestige, security and remuneration of these jobs. This is the next challenge for Ms Gallagher and the government, a challenge I would hope that Ms Gallagher is happy to take on and one that the government would accept.

Mr Speaker, I will be supporting the Tertiary Accreditation and Registration Bill 2003, and once again I commend Ms Gallagher for this bill.

**MS DUNDAS** (6.43): Mr Speaker, I will be supporting this bill in line with the support given by my Australian Democrats' colleagues on a federal level. We live in a rapidly and continually changing world and it is important that residents of the ACT have access to the highest standard of vocational and tertiary education. These standards can only be maintained through proper accreditation and auditing.

It is also important to highlight the provisions of this bill and the Vocational Education and Training Bill that will allow interstate and foreign tertiary institutions to deliver courses here in the ACT. Competition in the provision of educational services is not always a good thing but there is no reason why the residents of the ACT should be excluded from the many tertiary providers that are available in other Australian cities. I support this legislation as it establishes the necessary accreditations and quality assurances that higher education in the ACT needs.

I would also like to draw attention to the function of the council that will inquire into and advise the minister on issues about vocational education and training and higher education. I am sure that this Assembly does not need reminding of the crises that higher education finds itself in. Seven years of reduced funding by the federal government has passed more and more costs onto students, courses have been cut because they are not

profitable, job security is almost non-existent and yet the federal government wants to add to the burden on students, ever further increasing fees and the debts that students have to carry.

Unfortunately for the government and residents here in the ACT, we have to deal with the fallout from these regressive measures. This is typical of the shortsightedness of the federal government. It is not the federal government that will have to deal with the consequences of graduates not being able to afford a car or a home loan as they are in debt up to the hilt in order to pay their university degree. It is not the federal government that will have to deal with the invariable increases in stress, depression and suicide that come from the deliberate worsening of people's financial situations. Ultimately, the federal government's changes to higher education will mean fewer people are likely to take up a university degree or tertiary training, which will directly impact on the revenues to both the federal and ACT governments.

A number of reports have found that every university graduate contributes between 1.9 and 2.5 times the total cost of their education—primary, secondary and tertiary—through a progressive taxation system, and with Canberra having the highest density of university graduates in the country we cannot ignore this.

The legislation that we are debating today will bring the ACT in line with what is going on at a national level. It will create a system that will better advise the minister on accreditation and provide better accreditation of organisations here in the ACT. It is a bill worthy of support but we cannot ignore what is going on with both non-university and university tertiary accreditation across the ACT and how this is impacting on the residents of the ACT.

**MS GALLAGHER** (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (8.46), in reply: I thank members for their comments and for their indications of support for this bill. Members will note that the draft that was presented in April included a reference to the commencement date of 1 July 2003 which, of course, has passed. The commencement date I now propose is 1 November 2003 and I have circulated amendments to that effect. I acknowledge that Mrs Jacqui Burke brought that to our attention. I appreciate that and I thank her for her cooperation on this bill.

The ACT will be among the first to embed the model clauses in new legislation. This is a demonstration of our commitment to high-quality vocational education and training systems and sends a clear message of our support for the Australian quality training framework. Only the highest standards are appropriate for those delivering vocational education and training in the ACT.

Both bills have been considered by the Assembly's Scrutiny of Bills and Subordinate Legislation Committee. This committee questioned whether the provider could claim the exemption granted to the University of the Third Age in the Tertiary Accreditation and Registration Bill. The committee has been advised that the U3A exemption is a longstanding one used in other legislation. It is also noted by name in the National Protocols for Higher Education, which form the basis for the registration and accreditation provisions of this bill.

This bill moves the territory forward with an integrated approach to the registration of both vocational and non-university providers of education and training in the ACT. The bill will consolidate our current position of high quality and continue to safeguard the interests of the ACT tertiary education system, its learners, educators and the community at large, who all participate.

In conclusion, I thank members for their support. I would also like to thank my staff and departmental officers, particularly Brendan Ryan and Anne Houghton, for their work on getting the bill to this stage.

Question resolved in the affirmative.

Bill agreed to in principle.

### Detail stage

The bill.

**MS GALLAGHER** (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (6.49): I seek leave to move amendments 1 to 16 circulated in my name together.

Leave granted.

**MS GALLAGHER**: I move amendments 1 to 16 circulated in my name *[see schedule 10 at page 3095]*.

Amendments agreed to.

Bill as a whole, as amended, agreed to.

## Adjournment

Motion (by **Ms Gallagher**) proposed:

> That the Assembly do now adjourn.

### Death of Mr Sergio Vieira de Mello

**MR PRATT** (6.50): Mr Speaker, I rise to demonstrate my deep sadness at news yesterday of the death of Sergio Vieira de Mello, the head of the UN assist mission in Iraq, and the deaths of his UN staff comrades and those brave Iraqi staff killed along with him in the horrific truck bomb attack in Baghdad.

I knew Sergio professionally and had met with him in Africa and the Balkans. He was a very professional, very patient charismatic man who was often the UN's rapporteur across the world's trouble spots. My experiences working alongside the UN were mixed and varied, although on balance they were positive ones. In the cumbersome bureaucracy that is unavoidably the United Nations, Sergio shone out as a real leader—a very

committed and compassionate man but a man who, by force of his personality and quiet strength of character, really broke down the barriers and got things done. He was affectionately known by his colleagues as "the Surge". He was a man with the potential to become UN Secretary-General. The world has lost a great man.

Sergio sadly was trapped in the rubble and fought bravely for four hours before he died. I hope that the animals who placed the truck beneath Sergio's office, who killed all those people and who have further burdened the Iraqi people, get theirs and get theirs slowly.

I feel sorry for the families of the loved ones killed and especially for the Iraqi staff killed in that place. The Iraqi staff were a precious commodity; they were a rare commodity in a newly emerging civilised Iraqi society.

Again, I deeply mourn the passing of Sergio de Mello. We must fervently hope this tragedy will not destroy the resolve of the international intervention in Iraq and the Iraqi people themselves.

## Chief Minister

**MRS DUNNE** (6.52): Mr Speaker, I cannot let this sitting of the Assembly conclude without making some comment about the petulance and bad grace of the Chief Minister. This is a man who runs around jockeying for notice and telling everyone who would care to listen—and many who do not—just how great he is.

One of the measures of greatness is being able to admit that you have made a mistake and withdrawing gracefully. Twice this week we have seen examples of where the Chief Minister has failed to do this. On Tuesday he accused Mr Smyth of lying in this Assembly and, in the process of withdrawing, he accused him of misleading the Assembly. He then cast other aspersions upon his character when really all he should have done was withdraw.

But the most egregious example was yesterday when he accused Mr Pratt, almost sotto voce, of being a mole. When he was asked at the end of the day to withdraw, he could not do so gracefully. He said his remark was jocular but, from where I sat, seeing his fixed eye, his fixed jaw and his twitching lip, it did not look jocular to me.

Mr Pratt and his colleagues were arrested by Serbian authorities. They were imprisoned, beaten, falsely accused of spying and convicted by a kangaroo court. They disappeared. I am sure that the friends, colleagues and family of Mr Pratt do not take kindly to the notion of being accused of spying. These men were aid workers—men very much like Sergio de Mello that Mr Pratt has just spoken about—delivering vital lifesaving services to refugees. These people were heroes to the people they served. Mr Pratt and his colleagues were heroes in this country because of the unjust treatment that was meted out to them by the henchmen of the crumbling Serbian regime.

It is not jocular to come in here and make the sorts of comments that we heard from Mr Stanhope last night. "I can no longer watch a James Bond or a spy movie without the dreadful images of Mr Pratt flooding in front of my mind." What he clearly said was that

Mr Pratt was a spy. Mr Pratt and his colleagues were heroes. I would contend that Mr Stanhope is perhaps jealous of their hero status. There is more to heroism than dropping your daks and stripping down to your underwear in front of the cameras.

Question resolved in the affirmative.

**The Assembly adjourned at 6.55 pm until Tuesday, 26 August 2003, at 10.30 am.**

# Schedules of amendments

## Schedule 1

## Civil Law (Wrongs) Amendment Bill 2003

Amendments moved by Mr Stefaniak

**1**
**Clause 10**
**Proposed new section 30A (1)**
**Page 6, line 8—**

*omit*

might

*substitute*

would

**2**
**Proposed new clause 17A**
**Page 44, line 1—**

*insert*

### 17A New section 38AA

*in part 4.1, insert*

### 38AA Cap on damages for non-economic loss

(1) The maximum amount of damages that may be awarded for non-economic loss in relation to a claim is $300 000.

(2) The regulations may provide for the indexation of the amount mentioned in subsection (1).

(3) In this section:

***non-economic loss***—see section 38A (4).

**3**
**Clause 59**
**Proposed new section 30A (7)**
**Page 71, line 19—**

*before*

reason

*insert*

compelling

## Schedule 2

## Civil Law (Wrongs) Amendment Bill 2003

Amendments moved by the Attorney-General

**1**
**Clause 12**
**Proposed new section 31H (1) (a)**
**Page 9, line 23—**

*omit*

'factual causation'

*substitute*

('factual causation')

**2**
**Clause 14**
**Proposed new section 31ZYA (4)**
**Page 41, line 18—**

*insert*

(4) In giving evidence in relation to the question whether particular medical treatment amounts to professional negligence, the expert must have regard to whether the treatment was in accordance with an opinion widely held by a significant number of respected practitioners in Australia in the relevant field.

**3**
**Clause 23**
**Proposed new section 118C (2)**
**Page 49, line 14—**

*omit*

agree to, or allow a court to set, a hearing date for the claim

*substitute*

sign a pleading in relation to the claim

**4**
**Clause 23**
**Proposed new section 118D (1)**
**Page 50, line 3—**

*omit*

an action on a claim for damages is set down for hearing

*substitute*

a pleading has been signed in relation to a claim for damages

**5**
**Proposed new clause 58A**
**Page 70, line 7—**

*insert*

### 58A Section 30 (3)

*substitute*

(3) This section does not apply to—

(a) a cause of action to recover a penalty or forfeiture or sum by way of penalty or forfeiture unless the person having the cause of action is an aggrieved party; or

(b) a cause of action to which section 30B (Special provision in relation to children—claims relating to health services) applies.

**6**
**Clause 59**
**Proposed new section 30A (1) (b)**
**Page 70, line 14—**

*omit*

Civil Law (Wrongs) Act 2003

*substitute*

Civil Law (Wrongs) Act 2002

**7**
**Proposed new clause 59A**
**Page 72, line 28—**

*insert*

### 59A New section 30B

### 30B Special provision in relation to children—claims relating to health services

(1) This section applies if—

(a) a child (***the plaintiff***) suffers personal injury that gives rise to a claim for damages; and

(b) the claim relates to the provision of a health service.

(2) A cause of action for damages in relation to the claim is not maintainable if brought 6 years or more after the day the accident giving rise to the injury happened.

(3) However, if the injury is or includes a disease or disorder, the cause of action is not maintainable if brought after whichever of the following periods ends first:

(a) 6 years after the day the plaintiff (or the plaintiff's parent or guardian) first knows or ought reasonably to have first known—

(i) that the plaintiff has suffered an injury that is or includes a disease or disorder; or

(ii) that the injury is related to someone else's act or omission;

(b) 12 years after the day the accident giving rise to the injury happened.

*Note* The period mentioned in s (3) can be extended under s 36 but the period mentioned in s (2) cannot be extended under that section (see s 36 (6)).

(4) In considering whether or not the period mentioned in subsection (3) should be extended under section 36, the court must have regard to the opinion of a medical expert (or experts) on the question of when the plaintiff (or the plaintiff's parent or guardian) first knew, or ought reasonably to have first known—

(a) that the plaintiff had suffered the injury; or

(b) that the injury is related to someone else's act or omission.

(5) In this section:

***health service***—see the *Community and Health Services Complaints Act 1993*, section 4.

(6) This section applies to a cause of action that arises on or after 1 July 2003.

(7) If the cause of action arose before 1 July 2003, the cause of action is not maintainable if brought after whichever of the following periods ends first:

(a) the period that would apply to the cause of action under this section if this section applied to the action;

(b) the limitation period that applied to the cause of action before 1 July 2003.

**8**
**Clause 60**
**Page 73, line 1—**

*substitute*

**60 Personal injuries**
**Section 36 (5)**

*substitute*

(5) This section does not apply in relation to a cause of action to which either of the following applies:

(a) section 16B (Other than claims for damages for personal injury);

(b) the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).

(6) Also, this section does not apply in relation to the period mentioned in section 30B (2) (Special provision in relation to children—claims relating to health services).

## Schedule 3

## Civil Law (Wrongs) Amendment Bill 2003

Amendments moved by Ms Tucker

**1**
**Clause 13**
**Proposed new section 31NA (1)**
**Page 13, line 12—**

*omit*

, including claims to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies

**2**
**Clause 13**
**Proposed new section 31NA (2) (a)**
**Page 13, line 16—**

*omit* proposed new section 31NA (2) (a*), substitute*

(a) a claim under the *Workers Compensation Act 1951* or arising out of or in the course of employment; or

(ab) a claim to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies; or

**3**
**Clause 13**
**Proposed new section 31ZB (1) (a)**
**Page 27, line 9—**

*omit*

in the claimant's possession

*substitute*

that are in the claimant's possession and on which the claimant relies in the claim

**4**
**Clause 13**
**Proposed new section 31ZF (1) (a)**
**Page 30, line 18—**

*after*

in the claim

*insert*

and on which the respondent relies in the claim

**5**
**Clause 13**
**Proposed new section 31ZG (1)**
**Page 31, line 25—**

*after*

possession

*insert*

and on which the respondent relies in the claim

**6**
**Clause 14**
**Proposed new section 31ZW**
**Page 39, line 18—**

*omit*

**7**
**Clause 23**
**Proposed new section 118A, definition of *reasonable prospects of success***
**Page 48, line 18—**

*omit* the definition, *substitute*

***reasonable prospects of success*—**

(a) a claim has ***reasonable prospects of success*** if there is an arguable case for damages being recovered on the claim; and

(b) a defence has ***reasonable prospects of success*** if there is an arguable case for the defence defeating the claim or leading to a reduction of damages recovered on the claim.

**8**
**Clause 23**
**Proposed new section 118E (1A)**
**Page 51, line 7—**

*insert*

(1A) However, the presumption does not arise if the court considers the lawyer could not reasonably be expected to have foreseen the finding.

**Example**

The finding is based on evidence given by a witness that contradicts what the witness had previously told the lawyer.

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

**9**
**Clause 42**
**Proposed new clause 2 (c)**
**Page 60, line 19—**

*omit* proposed new clause 2 (c), *substitute*

(c) a claim under the *Workers Compensation Act 1951* or arising out of or in the course of employment; or

(d) a claim to which the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance) applies.

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## Schedule 4

## Civil Law (Wrongs) Amendment Bill 2003

Amendment moved by Ms Dundas

**1**
**Clause 22**
**Page 48, line 1—**

*[oppose the clause]*

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## Schedule 6

## Civil Law (Wrongs) Amendment Bill 2003

Amendments moved by Ms Tucker to the amendments moved by the Attorney-General

**1**
**Amendment 8**
**Clause 60**

*insert*

(7) However, the court may make an order under subsection (2) in relation to a period to which subsection (5) (a) or subsection (6) applies if—

(a) the court decides under subsection (2) that it is just and reasonable to do so; and

(b) the court considers that the circumstances of the case are exceptional and the interests of justice require it to make the order.

## Schedule 7

## Civil Law (Wrongs) Amendment Bill 2003

Amendment moved by Mrs Cross

**2**
**Subclause (4)**

*delete* subsection (a)

the period that would apply to the cause of action under subsection (2) if that subsection applied to the action.

*insert* new subsection (a)

after 1 July 2006.

---

## Schedule 9

## Civil Law (Wrongs) Amendment Bill 2003

Amendment moved by the Attorney General

**1**
**Clause 58**
**Proposed new section 16B (4)**
**Page 69, line 21—**

*substitute*

(4) If the cause of action arose before 1 July 2003, the cause of action is not maintainable if brought after the end of whichever of the following periods ends first:

(a) the 3-year period mentioned in subsection (2) that would apply to the action if the cause of action arose on 1 July 2003;

(b) the period that would have applied to the cause of action apart from this section.

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## Schedule 10

## Tertiary Accreditation and Registration Bill 2003

Amendments moved by the Minister for Education, Youth and Family Services

**2**
**Clause 2**
**Page 2, line 5—**

omit

1 July 2003.

substitute

1 November 2003.

**3**
**Clause 114 (1)**
**Page 78, line 4—**

omit

1 July 2003

substitute

1 November 2003

**4**
**Clause 114 (2)**
**Page 78, line 14—**

omit

1 July 2003

substitute

1 November 2003

**5**
**Clause 115 (1)**
**Page 78, line 22—**

omit

1 July 2003

substitute

1 November 2003

**6**
**Clause 115 (2) (a)**
**Page 79, line 3—**

omit

1 July 2003;

substitute

1 November 2003;

**7**
**Clause 115 (2) (d) (i)**
**Page 79, line 10—**

omit

1 July 2003—

substitute

1 November 2003—

**8**
**Clause 115 (2) (d) (ii)**
**Page 79, line 12—**

omit

1 July 2003—

substitute

1 November 2003—

**9**
**Clause 115 (3)**
**Page 79, line 15—**

omit

1 July 2003,

substitute

1 November 2003,

**10**
**Clause 116 (1)**
**Page 79, line 21—**

omit

1 July 2003

substitute

1 November 2003

**11**
**Clause 116 (2) (a)**
**Page 79, line 27—**

omit

1 July 2003;

substitute

1 November 2003;

**12**
**Clause 116 (2) (d) (i)**
**Page 80, line 5—**

omit

1 January 2004

substitute

1 May 2004

**13**
**Clause 116 (2) (d) (ii)**
**Page 80, line 7—**

omit

1 January 2004

substitute

1 May 2004

**14**
**Clause 116 (2) (d) (ii)**
**Page 80, line 8—**

omit

1 July 2003.

substitute

1 November 2003.

**15**
**Clause 116 (3)**
**Page 80, line 11—**

omit

1 July 2003,

substitute

1 November 2003,

**16**
**Clause 116 (4)**
**Page 80, line 16—**

omit

1 July 2003.

substitute

1 November 2003.

**17**
**Clause 118**
**Page 80, line 22—**

omit

30 June 2004.

substitute

30 October 2004.

# Answers to questions

## Legislative Assembly—committee teleconferencing (Question No 451) (Supplementary answer)

**Mr Cornwell** asked the Speaker, upon notice:

Since the inception of the Assembly Committee telephone hook-up in September 2002, so that quorums could be formed and discussions take place without all committee members being physically present:

(a) How often up to 28 February 2003 has the telephone hook-up been used and by which Committee(s);

(b) What has been the cost; and

(c) Who is responsible for payment of this cost.

**Mr Speaker**: The answer to the member's question is as follows:

(a) The telephone hook up permitted by sessional order 230A (which was adopted by the Assembly on 28 August 2002) has been utilised on two occasions, namely:

(i) 4 September 2002 by the Standing Committee on Public Accounts for a duration of 13 minutes and 54 seconds

(ii) 7 November 2002 by the Standing Committee on Status of Women for a duration of 50 minutes and 32 seconds

(b) The overall cost to the Assembly of the two phone calls were as follows

(i) Australia to Namibia - $23.62

(ii) Australia to USA - $14.60

(c) The Legislative Assembly Secretariat budget is responsible for the cost of these calls.

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## NSW Fire Brigade—transfers (Question No 622) (Supplementary answer)

**Ms Dundas** asked the Minister for Industrial Relations, upon notice, on 8 May 2003:

1) What was the age at which of these fire fighters could retire with full benefits under the applicable NSW award;

2) What was the age at which these fire fighters could retire with full benefits under the Commonwealth Superannuation Scheme;

3) Where one of these fire fighters suffered a compensable injury or illness requiring a long term absence from work, what system was employed to ensure that compensation

payments kept pace with entitlements under the NSW Fire Brigade award as classifications and rates of pay changed over time; and

4) Has the Government accepted the advice of Meryl Stanton of Comcare dated 20 August 1996, which states that the "contention that NSW Fire Service employees who transferred to the ACT Fire Brigade continued to be entitled to the conditions of employment that existed in NSW at the time of transfer, is correct. These conditions of employment were recorded in the relevant industrial award at that time".

**Ms Gallagher**: The answer to the member's question is as follows:

Answers to questions 1), 2) and 3) have been provided to Ms Dundas at an earlier date. The answer to question 4) required the recovery of files from archives prior to formulating the response.

4) The Government did not receive any advice from Ms Stanton dated 20 August 1996. Ms Stanton's comments appear to have been provided to Mr Buchanan in relation to a compensation claim he made ten years after ceasing to be an employee of the ACT Fire Brigade. While noting Ms Stanton's comments the Government's position remains unchanged. Legal advice is that Mr Buchanan has received his legal entitlements for compensation and retirement benefits. Ms Stanton's comments were considered by counsel prior to formulating the legal advice.

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## Seniors—Kaleen aged care facility (Question No 709)

**Mr Cornwell** asked the Minister for Planning, upon notice:

In relation to a proposed aged care facility at Kaleen:

(1) What is the status of the proposed 68 unit facility by and for the Chinese community;

(2) For how long has this proposal been under consideration by PALM;

(3) What is the reason for the delay in a decision being reached.

**Mr Corbell**: The answer to the member's questions is as follows:

(1) The National Australian Chinese Association is proposing to develop 37 independent living units and a 10 bed assisted living house.

The Association has sought to develop the aged persons' complex on Block 7 Section 85 Kaleen however, they are now pursuing the possibility of developing an alternative site in Gungahlin.

(2) The proposal to acquire Block 7 by direct sale has been under consideration for five years.

(3) The previous Government gave 'in priciple' agreement to the direct sale of Block 7 to the Association subject to the requirements of a Disallowable Instrument being satisfied and the relevant care standards being met by the Association.

Since that time there has been discussions with the Association about the proposed use of the land. Initially, it was considered that the proposed use of the land fell under the definition of 'retirement complex'. Based on current information ACT Planning and Land Authority advises that the proposed use is defined as 'supportive housing'.

To progress the development on Block 7 Section 85 Kaleen it will be necessary for the Association to prepare a Community Facility Needs Assessment and produce a design concept for the land using the High Quality Sustainable Design process.

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## Shopping centre refurbishments (Question No 713)

**Mr Cornwell** asked the Minister for Planning, upon notice:

In respect of the Department of Urban Services Retail Activity Coordination Group, convened by Planning and Land Management to prioritise shopping centre refurbishment in the ACT:

1. What Centres have been listed for consideration in (a) 2004-2005 and (b) 2005-06;

2. Where is the Hackett Shopping Centre in the refurbishment list.

**Mr Corbell**: The answer to the member's questions is as follows:

1. As yet the location of the Forward Design and Final Design and Construction Projects for 2004-2005 has not been decided. Priorities are being developed in accordance with predetermined criteria for the 2004-2005 and 2005-2006 financial year.

2. The priority for the Hackett shopping center for forward design funding is yet to be determined.

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## Phillip Oval (Question No 779)

**Mr Stefaniak** asked the Minister for Planning, upon notice:

In relation to Phillip Oval:

(1) For what types of use is Phillip Oval zoned;

(2) Has the Minister received any requests to change the use of Phillip Oval;

(3) If such a request was received ie to change it from recreational use to residential use, what procedures would be undertaken;

(4) Would the Minister consider changing the use that Phillip Oval is currently zoned for.

**Mr Corbell**: The answer to the member's questions is as follows:

(1) Phillip Oval has a Territory Plan Land Use Policy of Restricted Access Recreation with a Public Land overlay of Sport and Recreation Reserve. Where ancillary to the predominant recreation use a Club, Educational establishment, Guest house, Hotel or Motel may also be permitted.

(2) Development interests have approached the Government with proposals to redevelop Phillip Oval.

(3) Ministerial consent to transfer any concessional lease relies in part on a demonstration that such transfer is in the 'community interest'. Phillip Oval is a very significant community asset and in December 2002 I advised AFL Canberra that the Government does not support deconcessionalising the lease.

(4) The Draft Woden Town Centre Master Plan identifies development opportunities for Phillip Oval's frontage to Launceston Street whilst maintaining a full size Australian Rules field with a large seating capacity. The community is responding to these proposals through consultation on the draft plan and the Government will make its decision about possible future uses based on the outcome of that consultation.

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## Pine Island—vandalism
## (Question No 784)

**Mr Cornwell** asked the Minister for Urban Services, upon notice:

Further to your response to Question on notice no 326 regarding vandalism at Pine Island Reserve and subsequent restriction on vehicles imposed there between the hours of 9 pm to 8 am:

(1) Is the restriction on vehicles at Pine Island Reserve between the hours of 9 pm to 8 am currently maintained;

(2) If the answer to (1) above is affirmative, has there been a reduction in the levels of (a) vandalism (b) drug and alcohol use (c) violence and other anti-social behaviour at Pine Island Reserve since the restriction was introduced;

(3) What are the representative figures for (a), (b) and (c) above both prior to and since the introduction of the restriction on vehicles;

(4) If the answer to (a) above is negative, then why has the restriction on vehicle access to Pine Island Reserve between the hours of 9 pm to 8 am been lifted.

**Mr Stanhope**: The answer to the member's question is as follows

(1) Yes.

(2) Yes, qualitative evidence and observations suggest that there has been a significant reduction due to the limitations on vehicle access at night.

Prior to the restriction on vehicle access, most vandalism, drug and alcohol use and anti-

social behaviour occurred late at night. The vast majority of this behaviour was undertaken by persons who entered the area in a vehicle.

(3) No meaningful statistics are available due to the short period of time that the access restrictions have been in force, combined with the disruption to normal patterns of visitation in the aftermath of the January bushfires.

The sub-contractors responsible for maintenance of Pine Island visitor facilities have not reported any major damage from vandalism since the restrictions were introduced, though minor acts of vandalism such as graffiti have occurred.

The level of drug and alcohol use is difficult to determine. There has been a large reduction in the number of used syringes found by the sub-contractors in the course of their duties, providing indirect evidence of the reduction. The access restrictions have prevented car-based groups (often using drugs and alcohol) from gathering in the reserve at night.

Neither Environment ACT nor the maintenance sub-contractors are aware of any violent acts within Pine Island since the access restrictions were introduced. The Police have not advised of any incidents.

(4) As in answer number 1, the restriction is still in place.

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## Vintage Cellars, Oaks Estate (Question No 785)

**Mrs Dunne** asked the Minister for Planning, upon notice:

In relation to lease of premises at 4 McEwan Avenue, Oaks Estate, known as Vintage Cellars:

(1) What were the lease arrangements pertaining prior to the issuing of the 1981 lease;

(2) Is the Government satisfied that there has been historical consistency in the lease provisions and their enforcement;

(3) Can a change-of-use charge be levied on a business that has been in operation for 40 years;

(4) What discretionary powers can be exercised to ensure that the existing owners are not held liable for previous mistakes not of their own making;

(5) What efforts are being made by PALM to resolve this matter equitably and in a manner that does not penalise the owners.

**Mr Corbell**: The answer to the member's question is as follows:

(1) The Commonwealth acquired the freehold of the above premises on 15 January 1974. The former owner accepted outright compensation in full settlement of his claim on 16 February 1977.

On the same day (16 February 1977) the Commonwealth executed a tenancy agreement in favour of the former owner's tenants, for a term of six months and thereafter fortnightly. The purpose clause of the tenancy agreement was "Retail Sale and Wholesale Distribution of Liquor". The tenancy agreement remained current until the grant of the current 99-year lease on 5 June 1981.

(2) Yes

(3) Yes. Section 184 of the *Land (Planning and Environment) Act 1991* (Land Act) states that the Executive shall not execute a variation of a nominal rent lease unless the lessee has paid the Territory any change of use charge determined by the ACT Land and Planning Authority (ACTPLA).

(4) When purchasing an existing lease it is the responsibility of the purchasers to ensure that the current uses of the lease are in accordance with the Lease Purpose Clause and if additional use rights are to be sought that those additional rights are permitted uses by the Land Use planning policies in the Territory Plan.

(5) The Planning and Land Management Group (PALM) prepared a draft Variation to the Territory Plan (DVP), to address a number of issues of Oaks Estate's current planning. The DVP was released for public comment in October 2002 (DVP 207). In part, the draft Variation proposed the introduction of a Residential Area Specific Policy for those blocks included within the area already developed for mixed uses (i.e. Blocks 4, 5, 6, 9-14 of Section 7 and Section 10) and makes provision for existing commercial and light industrial uses. The proposed Variation drew extensively from previous studies including the Planning and Land Group planning study of May 2001, the Oaks Estate Planning Review: Community Consultation Final Report (Guppy and Stewart 1994) and the Oaks Estate: No Mans Land (Williams 1997). The need for a Variation to the Territory Plan arose from the Planning Study.

Variation 207 took effect on 1 July 2003. In respect of the area, that includes Block 4 Section 10 (Vintage Cellars) the variation introduces a 'A9' Residential Mixed Use Overlay to Section 7 Blocks 4-6, 9-14 and Section 10 Oaks Estate. The objective is to provide for a range of community, commercial and light industrial uses in conjunction with residential use. The Land Use Restrictions provide that shops shall only be permitted on Blocks 4 and 14 Section 7 and Block 4 Section 10.

The lessees of Block 4 Section 10 may now apply for a variation to the lease purpose to include use as a shop. This would enable the owners to sell food products inclusive of the sale of liquor products, currently permitted in the lease.

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## Liquor store lease provisions (Question No 786)

**Mrs Dunne** asked the Minister for Planning, upon notice:

In relation to lease provisions for liquor stores:

(1) Are liquor stores permitted to sell things other than liquor, such as soft drinks, mixers, bottle openers, corkscrews, newspapers, packaged snacks;
(2) What restrictions are placed on what they can sell;

(3) What is the legislation and/or regulations which govern this;

(4) How many liquor stores have sought change-of–lease provisions in the past five years to enable them to sell other items;

(5) How are such provisions policed for compliance;

(6) How many breaches have been detected in the past five years;

(7) If any breaches were detected, what were the penalties applied.

**Mr Corbell**: The answer to the member's question is as follows:

(1) The Territory Plan doesn't provide a definition for liquor store. However, the Plan provides for liquor stores within the definitions of "shop" and "supermarket" which are both permissible uses within a number of the precincts of the Commercial Land Use Policy Areas. These policy areas also permit a wide range of other retail opportunities, including the retail sale of all of the above items.

The Territory Plan definitions for shop and supermarket are as follows:

***Shop*** means the use of land for the purpose of selling, exposing or offering the sale by retail or hire, goods and personal services, includes *bulky goods retailing, department store, personal service, retail plant nursery, supermarket and take-away food shop*.

***Supermarket*** means a *large shop* selling food and other household items where the selection of goods is organised on a self-service basis.

(2) In addition to Question 1 above, a lease may limit the shop or retail rights rather than contain all the rights provided by the Territory Plan over that respective block. Conversely prior to the *Land (Planning and Environment) Act 1991*, (the Land Act) and the Territory Plan in 1993, leases contained other rights accorded to them under policies, which existed at the time these leases were granted. Section 12 of the Land Act ensured those rights are retained and continue in those respective leases for the term of that estate.

(3) The Crown lease is the legal instrument of tenure to accord land use rights. Since the Land Act rights granted in leases must be consistent with the Territory Plan (Section 8 of the Land Act), or in the case of National or designated land The National Capital Plan.

(4) Given that the precincts of the Commercial Land Use Policy Areas that permit "shop" and "supermarket" also permit a broad range of other products to be sold, there is no history of liquor shops seeking lease purpose clauses to provide additional products. There is, however, one lease at Block 4 Section 10 Oaks Estate, which historically was a manufacturing lease which also had specific uses permitted for liquor sales. This lease was granted in 1981 and was inconsistent with the land use policies in the Territory Plan. Since that lease was granted the demands of this community have significantly changed and this establishment became a shop serving this neighbourhood. The Land Use Policies for Oaks Estate were recently reviewed by VP207 and changed to allow this proprietor to add broader retail shop rights to the lease.

(5) Section 256 and schedule 5 of the Land Act provides for orders for breaches of a range of unauthorised land, leasing and planning activities. The *Land (Planning and Environment) (Compliance) Amendment Bill 2002* was passed on 26 June 2003.

(6) Only one of this type of lease purpose breach was detected in the last five years and that is the Vintage Cellars liquor outlet at Block 4 Section 10 Oaks Estate.

(7) For the Vintage Cellars breach detected, an order was made. Pending the variation to the Territory Plan and an application by the lessee to vary the lease, the order was not enforced. No penalties have to date been imposed.

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## Seniors—respite care (Question No 794)

**Mr Cornwell** asked the Minister for Health, upon notice:

In relation to the announcement by the Commonwealth Government that a $360,000 respite house would be set up in the ACT for older people and veterans (*Commonwealth Media Release*, '$363,000 To Give Canberra's Carers A Break', 18 June 2003):

(1) Does the ACT Government have additional information about this proposed facility and if so, could as much detail as possible be provided in addition to the information requested below;

(2) As well as the initial $20,000 that the ACT Government will be contributing to the respite care facility, will the ACT Government be providing ongoing funding for this project via Carers ACT or otherwise, and if so, what is the forecast value of that funding (a) 2003/04 (b) 2004/05 (c) 2005/06;

(3) What date is the facility set to commence operations;

(4) Where will this respite care facility be located;

(5) How many respite care recipients will be expected to use the facility per week and what will be the frequency of use made available to each respite care recipient ie; how many hours care per week will be made available to each respite care recipient.

**Mr Corbell**: The answer to the member's question is:

(1) The Commonwealth Government have been working with Carers ACT to develop a model of cottage and host family respite for carers of people with dementia. The Home from Home project is a 12 month pilot targeting carers of people with early stage dementia, younger people with dementia, and people from cultural and linguistically diverse (CALD) backgrounds. The program has been developed to provide more flexibility and choice in meeting the respite needs of carers. The project will offer flexible respite care in a small, cottage environment, and a small host family program.

A person with extensive experience and knowledge in the care and management of people with dementia, other disabilities, and frail aged, with be employed to coordinate the project.

(2) On 20 December 2002, Mr Jon Stanhope MLA announced that several respite care projects in the ACT were set to receive a share of $1 million from the 2002 - 03 Respite Care Budget Initiative. One of these projects identified funding of $20,000 towards the development of an innovative dementia respite service. The ACT Government has

contributed $20,000 in one-off, non-recurrent funding to the Home from Home project. This funding will cover the cost of the construction of a fence and the purchase of capital items.

(3) The project is presently in the set-up and planning phase, after which clients will be selected and the service will open. At this stage, the start date for the cottage is early September 2003, and early October 2003 for the host family project.

(4) The Home from Home project will be located in Gloria McKerrow House at Deakin.

(5) The service will run from Thursday to Sunday, from 8:00 am to 8:00 pm. Potentially two groups of a maximum of 6 people will be able to access the service during the given time periods per day. The number of people and types of people and groups accessing the service will be dependent on a number of factors including carer needs, gender, care needs of the people in the group, and possibly CALD backgrounds.

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## Land sales—legal actions (Question No 799)

**Mrs Dunne** asked the Minister for Planning, upon notice:

In relation to the Gungahlin Development Authority:

(1) How many land sales has the Authority conducted over the past 5 years;

(2) How much revenue has been generated;

(3) Did each of those sales result in meeting the stipulated conditions – ie, 10 per cent deposit on fall of the hammer and settlement in 56 days;

(4) If not, what were the exceptions, and what arrangements were made;

(5) How many of those sales resulted in legal action either by or against the Authority;

(6) What outcomes did legal action effect;

(7) What, if any, legal action is still pending;

(8) What cost has been incurred by the Authority for legal fees in the past five years;

(9) How many sales resulted in disputation other than legal action;

(10) What outcomes were affected by such disputation, if any;

(11) What, if any, disputations are pending.

**Mr Corbell**: The answer to Mrs Dunne's questions is as follows:

(1) 15 commercial sales
6 direct sales to community organisations or government agencies
7 residential estates sold by auction or tender to private sector

1 residential estate developed by joint venture
1 residential estate developed by the Authority as public sector project

(2) $54,052,5000 residential (Note: These figures do not include revenue for Harrison 1 Estate. They also include only Stage 1A of Yerrabi 2 Estate which involves the settlement of 28 blocks. The remainder of the Estate was yet to settle at the time of the question.)

$17,655,751 commercial.

(3) No.

(4) Two commercial sales, one on Section 13 and one on Section 14, both sold as result of a tender process, did not settle within 56 days. This is due to the complex nature of the tender process and the need to progress the concept plan submitted with Government agencies.

Two commercial sales, both on Section 18 were delayed by up to one month due to site servicing and survey issues. In one case interest was paid by the lessee for the delay in settlement after the lessee was advised that the sale could be settled.

Harrison 1 Estate did not settle due to the developer handing back the Estate to the Authority.

(5) Two sales have incurred formal legal action, the Valley Avenue Estate and Yerrabi 1 Estate.

(6) The outcome of the action on Yerrabi 1 was that the decision to grant the lease was set aside by the ACT Supreme Court after an injunction from an unsuccessful tenderer. The action on Valley Avenue Estate is not concluded at this stage.

(7) Action on Valley Avenue Estate is still pending.

(8)

| | |
|---|---|
| 1997-98 - | $8,260 |
| 1998-99 - | $5,100 |
| 1999-00 - | $67,573 |
| 2000-01 - | $89,365 |
| 2001-02 - | ($27,516) |
| 2002-03 - | $27,583 |

Please note: The 2001 figure included an accrual of $70,000. In 2002 only $42,484 was expensed. The subsequent write back from the over estimate resulted in the credit of $27,516.

The high expenditure in 2000 and 2001 was due to legal proceedings brought against the Authority. The expenditure in 2003 includes conveyancing fees for Yerrabi 2 Estate.

(9) The Authority deals with a range of issues with lessees on a regular basis. Under the terms of the Deed of Agreement with the lessee, a dispute process is articulated. Under this provision, two formal disputes, both on Valley Avenue Estate, have occurred.

(10) The disputes have led to legal action which is as yet unresolved.

(11) No other disputes are pending.

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## Canberra Stadium
## (Question No 802)

**Ms Dundas** asked the Treasurer, upon notice, on 1 April 2002:

In relation to tenders for naming rights to the Canberra Stadium:

1. How many members of the Stadiums Authority Board of management are also members of the ActewAGL Board?

2. What mechanisms were used to ensure the confidentiality of commercial information about the content of tender documents before the close of tenders for the naming rights?

3. Did any person who was a member of both boards have access to information about the content of tender documents before the close of tenders for the naming rights?

4. Does the Government consider it in the best interest of the Canberra community for the naming rights of Canberra Stadium to be sold?

5. What measures has the Government undertaken to prevent conflicts of interest on Territory Authorities?

6. Does the Government believe it is appropriate for individuals to be members of multiple boards of territory Authorities that may have competing commercial interests?

7. What action will the Government take to remove perceptions of conflicts of interest on Boards of Territory Authorities?

**Mr Quinlan**: The answer to the member's question is as follows:

1. None. However, Mr Kevin Neil is a director of Actew and alternative director of ActewAGL as well as a director of the Stadiums Authority whereby he can only attend ActewAGL Board meetings in the absence of a specific Actew director who is on the ActewAGL Board.

2. Only Stadiums Authority directors and the Stadiums Authority chief executive are aware of the details of specific naming rights proposals. Naming rights for Canberra Stadium were not put out for tender.

3. As noted in the answer to question 2 above, no tender was issued.

4. Given that the Budget allocation for the Stadiums Authority is reducing from $3 million in 2003-04 to $590,000 in 2004-05 and to zero from 2005-06 onwards, it is important that the Authority explores options to obtain funding from other sources so that it can remain self-sufficient. In such circumstances, the Canberra community may benefit from the sale of the naming rights. However this must traded off against the value of maintaining the identity of the Canberra Stadium.

5. The Government has policies in place to prevent conflict of interest issues in Territory authorities. For example, the enabling legislation of Territory authorities contain comprehensive provisions on dealing with conflict of interest issues. These provisions cover a range of matters including:

    - Requiring a board member to disclose any personal or pecuniary interest in a matter being considered by the board;
    - Any disclosure to be minuted; and
    - When appropriate, the board to give approval for the member to be present at the meeting when the particular matter is being discussed and take part in the decision making process of the board.

    The Government regularly reviews all issues associated with corporate governance to ensure consistency with current practices.

6. Appointments to boards are merit based and take into consideration the skills and experience requirements of each board. Occasionally, the same person may be appointed to several boards. However, disclosure provisions in the enabling legislation of Territory authorities are intended to ensure conflicts of interest issues are managed appropriately, generally conflicting commercial interests are rare.

7. As stated in the answer to question 5 above, the enabling legislation of Territory authorities include provisions to address conflict of interest issues. The Government is also undertaking a review of the corporate governance practices in a range of Territory authorities with a view to implementing a consistent approach.

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## Business surveys (Question No 808)

**Mr Smyth** asked the Minister for Economic Development, Business and Tourism, upon notice, on 26 June 2003:

In relation to small business:

(1) What surveys, if any, have been undertaken by your Government of (a) home? based business and (b) small business;

(2) Have any such reports been evaluated and released, if so where may copies be obtained;

(3) Has the Government received any complaints from small businesses or home? based business about the lack of assistance from Government, if so, what have you done to allay such concerns;

(4) What is the Government doing to improve access by (a) home-based and (b) small business to ACT business development schemes.

**Mr Stanhope**: The answer to the member's question is as follows:

In relation to small business:

(1) Two (2) surveys have been recently undertaken by the Government. They were:

- *After the Firestorm - A Report to BusinessACT on the effects of the January 2003 Canberra fires on small business in the ACT* - PG Policy Consulting, June 2003;

- ACT Small Business Survey, of 300 small and micro-businesses in the ACT - Artcraft Research, June 2003 ;

In addition, each month a Business Licence Information Service (BLIS) Customer Satisfaction Survey is undertaken.

(2) The two external survey reports are currently being evaluated and have not been released;

(3) No complaints about the lack of assistance from Government has been received through the BLIS survey responses.

The following extract from the 'After the Firestorm' report summarises the comments made by businesses surveyed:

*Responses to this question were almost uniformly positive. Many commented that the grant of $3,000 had been both welcome and timely: "invaluable", "much appreciated", "very generous", "excellent" and "a remarkably supportive program – both easy and fast" were among many similar comments made. There was positive comment in particular on the speed of the Government's response and the relative absence of "red tape" in the processing of applications; in some cases a contrast was drawn with the corresponding process being employed at federal government level. BusinessACT was commended by several owners for its competent and professional handling of the assistance program.*

*Minor reservations were mentioned by some respondents, but in the context of general support for the program and appreciation of the assistance provided. Some of the owners whose businesses had suffered flow-on effects, rather than direct damage, as a result of the fires commented that there was some initial uncertainty and conflicting advice as to their eligibility for assistance. One owner queried the decision to provide a uniform grant to all businesses affected by the fires, despite wide differences in the scale of their business activities and in the damage which had been inflicted by the fires. Several commented that the grant of $3,000 had fallen a long way short of "filling the gap"; at the same time, however, they readily acknowledged that limits had to be set to the amount of government assistance provided and that complete compensation was not the objective. Only one respondent was wholly negative in his comments, complaining that there had been "a lot of talk but not much action".*

*A number of owners took the opportunity to raise wider issues regarding the Government's handling of the fires and the assistance it had provided to the households and businesses affected. Several commented on what they saw as deficiencies in disaster management planning before the fires, while others criticised the differences in the assistance provided to households which were insured and those which were not. One owner expressed his strong dissatisfaction with the Government's handling of a lease renewal application which was critical to his future business plans.*

*In the area of business support, a few owners put the view that the support provided to businesses had been inferior to that provided to households; one commented, for example, that it would have been helpful if businesses, like households, had been provided with a "roadmap for recovery" to guide their business planning and decision-making in the period after the fires. In that regard, the same businesses commented that they had an ongoing need for expert advice and business assistance (in areas such as*

*business planning and taxation), as well as for psychological assistance and counselling support.*

As a result of business concerns for a "roadmap for recovery" the Government met with a small forum of fire affected business operators to address ongoing needs in the business recovery process. The business operators reported a need for business advice and planning and that the devastation of the fires had significantly impacted on the capacity of business operators to make clear business decisions.

In response, the Government funded a business mentoring and counselling service specifically for fire affected business operators, that works with individual businesses on a case-by-case basis. The service providers have been contracted to make contact with every business operator registered with the ACT Government for assistance under the Bushfire Business Assistance Package and offer continuing services including:

- Financial advice and planning
- Professional counselling
- After fire business planning
- Marketing planning
- Business restructuring
- Business mentoring

(4) The Government, through BusinessACT, employs a range of strategies to improve access by (a) home-based and (b) small business to ACT business development schemes. The strategies include dissemination of program information through:

(i) Business Gateway Hotline Service – a free telephone business enquiry service;

(ii) the Business Gateway Website;

(iii) promotional material that is widely distributed to over 30 organisations, eg. Canberra Connect Shopfronts, Peak Bodies and training organisations;

(iv) the Canberra Business Advisory Service;

(v) the provision a range of free, well promoted business seminars;

(vi) the BusinessACTivity Newsletter

(vii) a BusinessACT presence at other relevant seminars and conferences; and

(viii) all BusinessACT staff promoting program information through work activities.

The Government has also recently funded the Micro and Home Business Association to develop a package of measures to assist the growth of the home-based business sector.

As a result of these strategies the Government provided grants to 152 small businesses and provided assistance to over 3,000 clients through the Canberra Business Advisory Service in 2002/03.

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## Land sales—legal actions (Question No 809)

**Mrs Dunne** asked the Minister for Planning, upon notice:

In relation to government land auctions, specifically that of Harrison 1 Estate on 11 June 2003:

(1) When did the Gungahlin Development Authority (GDA) first become aware that the cheque offered for deposit by the successful bidder was to be dishonoured;

(2) What discussions and/or negotiations took place with the bidder between the fall of the hammer and the cheque being dishonoured;

(3) Who took part in these discussions and/or negotiations;

(4) Was any approach made by the GDA to any associates of the bidder in this regard;

(5) If so, who and by whom;

(6) Did the GDA have any contact with the Commonwealth Bank in regard to this matter between the auction and the cheque being dishonoured;

(7) When was legal advice sought by the GDA;

(8) What questions were asked in regard to that advice;

(9) When was the advice received.

**Mr Corbell**: The answer to Mrs Dunne's questions is as follows:

(1) 16 June 2003.

(2) A meeting occurred on the morning of 16 June 2003 where it was indicated that there may be issues with the cheque.

(3) A Director of the company and the Chief Executive Officer of the Gungahlin Development Authority

(4) No.

(5) N/A

(6) No.

(7) 16 June 2003.

(8) Could the GDA extend the time for payment of the deposit.

(9) Verbal advice was received on 16 June 2003. Written advice was received on 18 June and 24 June 2003.

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## Master Builders Association of the ACT (Question No 814)

**Ms Dundas** asked the Minister for Disability, Housing and Community Services, upon notice:

In relation to the Master Builders Association Awards Night held on 27 June 2003:

What was the cost to the ACT Government of sponsorship of this night.

**Mr Wood**: The answer to the member's question is as follows:

Each year Housing and Community Services sponsors the Master Builders Association of the ACT Award for Special Housing. In 2002-03, the cost of this sponsorship was $5,500 inclusive of GST.

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## Civic Library (Question No 816)

**Mr Cornwell** asked the Minister for Urban Services, upon notice:

In relation to Civic Library:

(1) What is the current value of rent per square metre per annum for the use of the premises occupied by the ACT Public Library Service in Civic;

(2) What is the duration of the current lease for the premises at (1) above and what is its expiry date.

**Mr Wood**: The answer to the member's question is as follows:

(1) The rent per square metre per annum is $467.25 plus GST.

(2) The lease is for 4 years and it expires on 31 December 2004.

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## Road repairs (Question No 817)

**Mr Cornwell** asked the Minister for Urban Services, upon notice:

In relation to your media release of 7 March 2003 that 32 000 square metres of asphalt road repairs were to be undertaken and completed by end June 2003:

(1) Has this work been completed;

(2) If not, what is still to be completed;

(3) Why is the outstanding work not completed;

(4) Is there any cost overruns from the $1,172,560 contract and if so, how much and why.

**Mr Wood**: The answer to the member's question is as follows:

(1) All work is complete with the exception of one intersection at Southern Cross and Coulter Drives.

(2) The asphalt overlay is outstanding for the Southern Cross Drive and Coulter Drive intersection at Belconnen. All the preparatory asphalt patching has been completed at the intersection. The Contractor has placed temporary line marking and some asphalt cover over milled areas for safe operations. This temporary work has been carried out at the Contractor's cost. Completion of the overlay is expected by 30 November 2003 when favourable weather conditions are available for the laying of the polymer modified binder asphalt.

(3) The outstanding work was not completed because of a combination of events. Work was restricted to weekends for this major intersection to avoid weekday traffic disruption, especially during peak periods. The Contractor was required to give two weeks notice prior to commencing work to enable public advertising for potential delays. Unfortunately it rained and/or the temperatures were not acceptable over a number of weekends for the laying of the polymer modified binder asphalt. The work was eventually deferred until the end of the year with the return of favourable weather conditions.

(4) The expected final cost is $1,433,186 for the schedule of rates contract. That is, $260,626 above the original contract value which was based on estimated quantities. The increase is within the allocated budget for the programme. The increased contract cost is due to increased actual quantities for crack sealing, asphalt patching and preparation of unsound base material or subgrade. These preparatory works are often more than identified at the time of assessment which takes place 6 to 12 months prior to the actual work. That is, the road pavement has deteriorated further.

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## Driving offences—mobile phones (Question No 818)

**Mr Cornwell** asked the Minister for Urban Services, upon notice:

(1) How many motorists were convicted for using a hand-held mobile telephone in financial year 2002-03

(2) How many at (1) paid the fine;

(3) How much revenue was collected;

(4) Does the offence of using a hand-held mobile telephone also apply to hand-held CB radios, eating, smoking or drinking while driving and if not, why not;

(5) Why was it necessary to increase the fine from $118 to $220 and did the original fine cover the cost of enforcing the penalty.

**Mr Wood**: The answer to the member's question is as follows:

(1) The number of motorists issued an infringement notice for driving while using a mobile phone in the 2002-03 financial year was 690. The AFP advised that very few of these matters proceed to Court, where a court penalty of $2,000 may apply.

(2) There were 544 motorists who paid mobile phone infringement notices in 2002-03. Some of these payments related to infringements issued in 2001-02.

(3) Revenue received from mobile phone infringements in 2002-03 was $64,192.

(4) Australian Road Rule 300, which deals with hand held mobile phones, specifically excludes CB radios from the definition of mobile phones. The Australian Road Rules were developed by the National Road Transport Commission in consultation with all Australian governments through their transport agencies, police, and other stakeholders. A case for including CB radios was not made at that time, for reasons such as the different technology involved and the use of radios in service and emergency vehicles.

Australian Road Rule 297, *Driver to have proper control of a vehicle etc*., is the most appropriate road rule to deal with the multitude of other reasons why a driver may not have proper control of a vehicle. The infringement notice for driving without proper control of a vehicle is $123.

(5) The fine was increased from $118 to $220 for several reasons:

- the policy of aligning ACT parking and traffic infringements with those applied in NSW;
- the Australian Federal Police recommended an increase in the penalty based on the high number of infringements issued, their perception that the problem is growing, and the seriousness of the offence;
- a survey conducted by TELSTRA in early 2003 found that a third of those polled admitted making calls while driving at least once a week and a sixth at least once per day. These numbers provide further evidence that hand held mobile phone use while driving is widespread and that the previous penalty level was not an effective deterrent;
- there is increasing evidence that the use of hand held mobile phones while driving is dangerous. United Kingdom studies found that driving while using a mobile phone is comparable to driving with a blood alcohol limit of more than 0.08; and
- advice from the Criminal Law and Justice Group was that the increase was well within the acceptable range when compared to the Court penalty for the same offence (currently $2000).

Penalty amounts are based on the seriousness of the offence and deterrence rather than cost recovery.

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## Littering
## (Question No 819)

**Mr Cornwell** asked the Minister for Urban Services, upon notice:

In relation to littering and rubbish removal:

(1) Who is responsible for ensuring that rubbish is collected from the nature strip and planter boxes and bays in Giles Street Kingston, between Howitt and Jardine Streets, in the area which extends to include the public telephone boxes and the area adjacent to the Commonwealth Bank;

(2) Have any fines or warnings been issued for littering in the ACT, in particular throwing away cigarette butts, during (a) 2002-03 (b) 2001-02 (c) 2000-01;

(3) What is the (a) total value of fines and (b) number of fines issued for littering in the ACT, in particular throwing away cigarette butts, in the years listed at (2) above.

**Mr Wood**: The answer to the member's question is as follows:

(1) Department of Urban Services.

(2) Littering is dealt with by issuing a Litter Infringement Notice under the *Litter Act 1976*. Fines and warnings during the years requested area as follows:

| YEAR | TOTAL INFRINGEMENTS ISSUED | INFRINGEMENT WARNINGS ISSUED | CIGARETTE RELATED INFRINGEMENTS ISSUED | CIGARETTE RELATED WARNINGS ISSUED |
|---|---|---|---|---|
| 2002-2003 | 67 | 12 | 33 | 5 |
| 2001-2002 | 53 | 31 | 15 | 0 |
| 2000-2001 | 49 | 10 | 10 | 3 |

(3) The value and number of fines issued, identifying the cigarette related ones are as follows:

| YEAR | TOTAL VALUE OF FINES ISSUED & COLLECTED INCLUDING CIGARETTE $ | NUMBER | CIGARETTE RELATED ISSUED & COLLECTED $ | NUMBER |
|---|---|---|---|---|
| 2002-2003 | 13,900 | 67 | 6,000 | 33 |
| 2001-2002 | 13,900 | 53 | 2,500 | 15 |
| 2000-2001 | 11,400 | 49 | 1,500 | 10 |

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## Aged day care centres—transport costs (Question No 822)

**Mr Cornwell** asked the Minister for Health, upon notice:

In relation to the closure of the Narrabundah and Dickson Aged Day Care Centres earlier this year:

(1) How many people were being regularly transferred by bus from (a) Dickson to Belconnen (b) Narrabundah to Tuggeranong as at 31 January 2003 and 30 June 2003;

(2) What was the estimated cost of these transfers at January 2003 and what was the real cost at 30 June 2003.

**Mr Corbell**: The answer to the member's question is:

(1) There are currently approximately 48 people, who previously attended the Dickson Aged Day Care Centre, being transported by bus to Belconnen for aged day care services. There are approximately 11 people, who previously attended at Narrabundah, being transported to Tuggeranong.

Exact numbers for the 31 January 2003 and 30 June 2003 are not available, as the Community Health data system does not record information on transportation.

(2) Community Health has a fixed contract price of $300,000 per year with ACTION Buses. The cost of transporting clients to Belconnen and Tuggeranong has been accommodated within this price.

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## School enrolments (Question No 823)

**Mr Cornwell** asked the Minister for Education, Youth and Family Services, upon notice, on 19 August 2003:

Further to a media release issued by the ACT Council of Parents and Citizens Associations on 27 June 2003 entitled 'Parents Say School Funding is Inadequate':

(1) What percentage of all year 12 students enrolled in ACT Government schools in (a) 1998 (b) 1999 (c) 2000 (d) 2001 (e) 2002 successfully achieved the ACT Year 12 Certificate;

(2) What is the total actual number of ACT Government school Year 12 students enrolled in each of the years at (1) above.

(3) Are the figures requested at (1) and (2) above available for ACT non-government schools, and if so can they please be provided.

**Ms Gallagher**: The answer to Mr Cornwell's question is:

(1) The percentage of all Year 12 students enrolled in ACT Government schools to successfully achieve a Year 12 Certificates in:

| | |
|---|---|
| 1998 | 85.9% |
| 1999 | 84.9% |
| 2000 | 87.9% |
| 2001 | 87.9% |
| 2002 | 87.4% |

(2) The total number of ACT Government school Year 12 students enrolled in each of the years:

| | |
|---|---|
| 1998 | 3253 |
| 1999 | 3149 |
| 2000 | 3294 |
| 2001 | 3091 |
| 2002 | 2955 |

(3) The total and percentage of all Year 12 students enrolled in ACT non-government schools to successfully achieve a Year 12 Certificates in:

| | | |
|---|---|---|
| 1998 | 1370 | 98.5% |
| 1999 | 1458 | 99.4% |
| 2000 | 1346 | 99.2% |
| 2001 | 1414 | 98.2% |
| 2002 | 1606 | 97.8% |

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## Questions without notice (Question No 824)

**Mr Cornwell** asked the Speaker, upon notice:

When might the Assembly receive a report from the Standing Committee on Administration and Procedure concerning an amendment to Standing Order 118 (seeking to restrict Ministers' replies to questions without notice to five minutes) in conformity with the Government's 2001 Election policy which was referred to the Committee on 7 May 2003.

**Mr Speaker**: The answer to the member's question is as follows:

The provisions of standing order 241 preclude me from providing details of the Committee's private deliberations. The Committee met for a deliberative meeting on 6 August (the meeting was chaired by the Deputy Speaker as I was absent) and the next scheduled deliberative meeting will be held in October 2003.

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## Pine seedlings (Question No 827)

**Mrs Dunne** asked the Minister for Urban Services, upon notice:

In relation to the Non Urban Land Review concerning the replanting of pines by ACT Forests

(1) Have any of the areas of ACT land been considered under the review been planted with pines, if so why?

(2) If so, has the future use of that land been determined prior to the Review being completed?

(3) Why weren't native trees and grasses planted on bushfire affected areas instead of pines?

(4) Who decided to plant the pines and can supporting documentation for that decision be provided?

**Mr Wood**: The answer to the member's question is as follows:

(1) 800 hectares in Pierces Creek and Uriarra were planted with pine trees this winter. The pine trees were ordered in September last year (2002) for planting this winter. The bushfires in January 2003 impacted greatly on the commercial pine plantation in Pierces Creek, Stromlo and Uriarra. If the pine trees had not been planted, ACT Forests would have had to still pay about $300,000 to the contracted nurseries for growing of the seedlings and cuttings.

(2) The future use of this land has not been decided. The land planted is highly prone to soil movement and erosion since the January bushfires. This area is also in the Cotter Dam catchment. If the Government decides not to continue with commercial pine plantations once the Non Urban Review has been completed, then this environmentally sensitive land can be managed for amenity, water quality, recreation and/or soil conservation.

(3) It is important to revegetate this land as soon as possible after the fires in January. As ACT Forests already had ordered one million seedlings and cuttings in 2002, it was appropriate that these seedlings and cutting be planted on this land.

(4) The decision to replant the pines was made by Cabinet in March 2003 and was based on a Cabinet Submission presented by me as minister responsible for ACT Forests.

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## Superannuation (Question No 830)

**Mr Smyth** asked the Treasurer, upon notice:

In relation to the analysis of the performance of the Superannuation Provision Account (SPA) in the Management Report for the June Quarter 2003:

(1) On what assumption was the revised estimated outcome of the market value of SPA investments of a reduction of $58.793 million based;

(2) What were the reasons for the variance in the market value of SPA investments between the estimate of $58.793 million and the preliminary result of a reduction of $44.114 million;

(3) What is the estimate for the change in market value of SPA investments over the 12 months to 30 June 2004;

(4) On what assumptions was the revised estimated outcome of the revenue from dividends and interest, earned from SPA investments, of $48.692 million based;

(5) Why was this estimated outcome of revenue to be derived from dividends and interest, earned from SPA investments, increased by $16.278 million, or 50 per cent, over the estimate provided in the 2002-03 Budget;

(6) What is the estimate for the quantum of revenue to be generated from dividends and interest earned from SPA investments over the 12 months to 30 June 2004.

**Mr Quinlan**: The answer to the member's question is as follows:

(1) On what assumption was the revised estimated outcome of the market value of SPA investments of a reduction of $58.793 million based?

Capital gains and losses on equity investments are inherently difficult to forecast over the short term due to the volatile nature of these investment markets. Global equity markets react daily to news, current affairs and economic statistics. As at end June 2003, the SPA had approximately $368.552 million in equity related investments. A small 5% variance to the market values on these investments can lead to an $18.428m variance. As such the SPA must take a long term view when budgeting for these investment earnings.

The $58.793 million estimate was a combination of an estimated fall in market values on the equity investments of $55.593 million and estimated fund manager and administration expenses relating to the investment portfolio of $3.200 million for the financial year.

As at end February 2003, changes in the net market values of the SPA's investments were down $67.496 million, with management and administration expenses of $1.835m – a total of $69.331 million. Net investment earnings stood at approximately ($38.236m).

For the 2002-2003 estimated outcome the SPA forecast a conservative improvement on these investments over the remaining year, improving from ($67.496) million to ($55.593) million due to an anticipated small improvement in global equity market prices. Total net investment earnings for the 2002-2003 financial year were forecast to improve to ($10.100) million.

(2) What were the reasons for the variance in the market value of SPA investments between the estimate of $58.793 million and the preliminary result of a reduction of $44.114 million?

Over the last four months of the financial year, equity markets rallied strongly, both locally and internationally. These rallies, in percentage terms, were much larger than anticipated for the estimated outcome. From beginning March 2003 to the end of the financial year the SPA recorded over $41.8 million in investment earnings. The estimated outcome had anticipated approximately $28.1 million. This variance is due to the increase in market values over and above what was anticipated for the estimated outcome.

These strong rallies in global equity markets lead directly to the actual outcome of ($41.231) million being a $14.362 million improvement over the estimated outcome of ($55.593) million. Additionally, fund manager and administration expenses relating to the investment portfolio resulted in a saving of $0.317 million largely reflecting lower management fees payable on reducing equity values. The total variance to the estimated outcome for these expenses being an improvement of $14.679 million.

(3) What is the estimate for the change in market value of SPA investments over the 12 months to 30 June 2004?

The estimated change in market values of the SPA investments over the 2003-2004 financial year is approximately $9.375 million, reflecting the lowering of the estimated portfolio return for 2003-04 from 5% real to 3% real and the current asset allocation of the portfolio remaining heavily weighted to income securities.

(4) On what assumptions was the revised estimated outcome of the revenue from dividends and interest, earned from SPA investments, of $48.692 million based?

The estimated outcome of $48.692m from dividends and interest earnings was based on the fact that the portfolio would remain heavily weighted to income securities during the 2002-03 financial year, which was not the original budget assumption.

The estimates are derived from historic dividend yields applicable for local and international equity investments, as well as the coupon yields applicable to the income security portfolios of cash and fixed interest. Actual dividend and interest earnings for the 2002-03 financial year of $47.692 million were only $1.000m or (2%) below the estimated outcome.

(5) Why was this estimated outcome of revenue to be derived from dividends and interest, earned from SPA investments, increased by $16.278 million, or 50 per cent, over the estimate provided in the 2002-03 Budget?

Estimates of SPA investment earnings are driven by the anticipated asset allocation of the investment portfolio over the following financial year. The original budget had incorporated an asset allocation more geared toward growth assets (equities) due to the anticipated transition of the portfolio to the new Strategic Asset Allocation.

Due to the continued poor outlook for global equity markets over the year, a decision to not increase exposure to growth assets resulted in the investment portfolio asset allocations being substantially different to original budget assumptions.

Consequently, the forecast estimated outcome for revenue from interest earnings was increased for the year based on the actual asset allocation of the portfolio at that time.

(6) What is the estimate for the quantum of revenue to be generated from dividends and interest earned from SPA investments over the 12 months to 30 June 2004?

The estimate for dividend and interest earnings for the 2003-2004 financial year is $52.889 million, $37.385 million in interest earnings and $15.504 million in dividend earnings.

This estimate is based on the maintaining of the current asset allocations of the investment portfolio during 2003-2004 as at 30 June 2003.

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## Kathryn Grosvenor—reward (Question No 839)

**Mr Pratt** asked the Minister for Police and Emergency Services, upon notice, on Wednesday, 20 August 2003:

In relation to a monetary reward regarding information leading to the arrest of person/s suspected to be involved in the death of Kathryn Grosvenor and that there are many flyers

still across Canberra promoting the cash reward for information leading to an arrest and such reward was available until 30 June 2003. Has the deadline of this reward now passed or has consideration been given to extending the deadline.

**Mr Wood**: The answer to the member's question is as follows:

This matter is currently under consideration by the Chief Police Officer for the ACT, Mr John Murray APM. A decision in relation to the issue will be announced in the near future.

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## Drink spiking (Question No 840)

**Mr Pratt**: asked the Minister for Police and Emergency Services, upon notice, on Wednesday, 20 August 2003:

In relation to drink spiking:

(1) How many cases of drink spiking were reported to police in:

(a) January 2003;
(b) February 2003;
(c) March 2003;
(d) April 2003;
(e) May 2003;
(f) June 2003;
(g) July 2003;

(2) Of these cases did any victims have to be taken to hospital for treatment;

(3) Were there any suspected cases of drink spiking referred from the Hospital to police, if so, how many and are those numbers included in the figures in (a) to (g) above;

(4) Were there any arrests for drink spiking in (a) to (g) above, if so, what charges were laid;

(5) What are the penalties for a person found responsible for drink spiking;

(6) What initiatives have been implemented by police in (a) to (g) above to combat drink spiking.

**Mr Wood**: The answer to the member's question is as follows:

(1) The number of suspected drink spiking incidents reported to police between January and July 2003 were:

| | |
|---|---|
| (a) January 2003 | 14 |
| (b) February 2003 | 11 |
| (c) March 2003 | 4 |
| (d) April 2003 | 11 |
| (e) May 2003 | 6 |
| (f) June 2003 | 3 |
| (g) July 2003 | 4 |

(2) ACT Policing does not collect specific data in relation to this issue. A number of suspected victims sought treatment at Canberra hospitals of their own accord. Police also conveyed, or arranged for the conveyance, of suspected victims to hospital when they attended at a police station in the first instance.

(3) ACT Policing does not collect specific data on this question.

(4) No arrests for offences relating to drink spiking incidents were made between January and July 2003.

(5) Offences that can be considered by police in relation to drink spiking are

(a) Acts endangering life (section 27 of the *Crimes Act 1900*). This offence carries a maximum penalty of 10 years imprisonment, with a provision for a 15 year term of imprisonment if the offence contained a specific intention to commit further offences; and
(b) Acts endangering health (section 28 of the *Crimes Act 1900*). This offence carries a maximum penalty of 5 years imprisonment.

(6) During the period January to July 2003, ACT Policing undertook an education and public information program, *Operation Skeet*. There has been widespread education within the AFP in relation to victimology along with the methodologies and indicators of drinking spiking. ACT Policing has standardised its response and evidence gathering procedures relating to incidents of suspected drink spiking. During January 2003, ACT Policing undertook an extensive media campaign through television commercials warning the public of the dangers of drink spiking. At the same time ACT Liquor Licensing released bottle ties and drink coaster warnings. Beat teams in both North and South districts were briefed on the issue of drink spiking and commenced a foot patrol campaign of the City, Manuka and Kingston nightclub areas. ACT Policing is currently maintaining a watching brief on drink spiking incidents in order to monitor and address significant outbreaks of this type of offence.

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## Motor vehicles—burnouts (Question No 841)

**Mr Pratt** asked the Minister for Police and Emergency Services, upon notice, on Wednesday, 20 August 2003:

In relation to burnout legislation:

(1) Is it still possible to confiscate motor vehicles from drivers in the ACT who are conducting burnout activity in contravention with the Road Transport Act;

(2) Under what circumstances can a vehicle be confiscated;

(3) What other penalties can be enforced by police for those caught undertaking burnout activity;

(4) How many drivers were charged for conducting burnouts in the ACT in (a) 1999-2000, (b) 2000-2001, (c) 2001-02 and (d) 2002-03;

(5) How many drivers were issued with infringement notices for conducting burnouts in the ACT in (a) 1999-2000, (b) 2000-2001, (c) 2001-02 and (d) 2002-03;

(6) How many vehicles were confiscated in (a) 1999-2000, (b) 2000-2001, (c) 2001-02 and (d) 2002-03;

(7) What other penalties were enforced for burnout activity in (a) 1999-2000, (b) 2000-2001, (c) 2001-02 and (d) 2002-03;

(8) Has the number of reports to police regarding burnout activity in the ACT been reduced following the introduction of this legislation.

**Mr Wood**: The answer to the member's question is as follows:

(1) Yes.

(2) A vehicle can be confiscated in accordance of Sections 10A, 10B and 10C of the Road Transport (Safety and Traffic Management) Act 1999.

(3) Other penalties that can be enforced by police include negligent and dangerous driving (sections 6 and 7 of the Act). Traffic infringement notices covering burnouts are also available, which amount to a fine of $385 and aggravated burnouts which has a fine of $495. Both offences carry a penalty of a 3 point deduction off a licence.

(4) (a) 5 (b) 59 (c) 65 (d) 114

(5) The table below summarises the burnout charges for the years 1999-2003.

| Years | Burnouts | Aggravated burnouts |
|---|---|---|
| (a) 1999-2000 | 0 | 18 |
| (b) 2000-2001 | 0 | 8 |
| (c) 2001-2002 | 5 | 116 |
| (d) 2002-2003 | 13 | 154 |

(6) All confiscated and exhibited vehicles are recorded under the same category on the Police Real-time Online Management Information System while information is also held on other registers. Given the current methods of recording data, it is not practical within the current time limit to identify or extract specific information on confiscated vehicles from the different data sets for the years 1999-2003 as it would be a prohibitively labour intensive and time consuming process. However, records from the beginning of this year show that six cars have been seized. This number includes two seized cars from the end of last year which were still at the ACT Property Office in January 2003.

(7) Given the various methods of reporting and recording burnout activities by police on the Police Real-time Online Management Information System, ACT Policing does not collect specific data in relation to this question. The courts also issue penalties, however, data on such penalties is not retained by ACT Policing.

(8) ACT Policing collects and records data on burnout activity under a number of systems including computer-aided despatch incident reports and the Police Real-time Online

Management Information System, where burnouts could be recorded in a range of jobs including traffic and noise incidents or as disturbances. ACT Policing can not readily provide the data, as it would involve a prohibitively labour intensive and time consuming process.

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## David Eastman
## (Question No 850)

**Mr Stefaniak** asked the Attorney General, upon notice, on Thursday, 21 August 2003:

In relation to the pending special investigation into the conviction of David Eastman for the murder of the Assistant Commissioner Colin Winchester:

(1) How much has been spent in relation to this matter by the ACT court system since you proposed this investigation as Minister;

(2) Could you please provide an itemised break-up of this expenditure;

(3) How much money has the ACT Director of Public Prosecutions spent in relation to this matter over the same time period;

(4) Could you please provide an itemised break-up of this expenditure;

(5) How much money has your Department spent in relation to this matter over the same time period;

(6) Could you please provide an itemised break-up of this expenditure;

(7) How much money has been spent in relation to this matter by the ACT Legal Aid Office;

(8) Could you please provide an itemised break-up of this expenditure.

**Ms Gallagher**: The answer to the member's question is as follows:

The assertion that this "special investigation" was proposed by the Attorney General is wrong. It is a matter of public record that former Chief Justice Miles directed pursuant to section 475 of the Crimes Act 1900 that an inquiry be undertaken. The former Chief Justice made this direction following an approach direct to him by Mr Eastman.

(1) A total of $60,766.30 in direct expenditure has been incurred in this matter.

(2) Employee expenses

Total: $ 2,940.00

*Non-employee expenses*

| | |
|---|---|
| Information technology | $ 3,618.89 |
| Legal costs | $50,079.25 |
| Transcripts | $ 389.15 |
| Office services | $ 190.75 |
| Telephone costs | $ 2,325.27 |
| Travel | $ 1,222.99 |
| Total: | $57,826.30 |

(3) The identifiable expenditure by the Office of Director of Public Prosecutions (DPP) is $232,000.00.

(4) The costs include $185,000.00 for Counsel, with the balance ($47,000.00) being the ascertainable costs of DPP staff engaged to assist with the inquiry. The staff expenditure excludes overhead costs. It is not possible to quantify precisely expenditure such as a proportion of the Director's time, or other DPP staff who have assisted in the matter from time to time, or photocopying and communication expenses, which have been substantial.

(5) The Department of Justice and Community Safety has incurred expenditure of $264,167.34.

(6) In relation to the current proceedings before the court the expenditure is:

*Disbursements*

| | |
|---|---|
| Counsel's fees | $ 85,364.03 |
| Transcript | $ 2,901.55 |
| Courier Services | $ 328.89 |
| Room Hire (High Court) | $ 100.00 |
| Photocopying (to send to Counsel) | $ 101.77 |
| TOTAL DISBURSEMENTS | $ 88,796.24 |
| Legal costs (Government Solicitor's Office) | $ 86,814.84 |
| TOTAL COSTS AND DISBURSEMENTS | $175,611.08 |

In relation to the inquiry that has been conducted by Magistrate Pike the expenditure is:

*Disbursements*

| | |
|---|---|
| Publications (Sydney Morning Herald and Canberra Times) | $ 3,001.02 |
| Air Travel | $ 2,496.62 |
| Cabcharge | $ 32.25 |
| Transcript | $ 2,356.79 |
| Postage & Air Freight | $ 205.04 |
| Process Service | $ 1,424.00 |
| Forensics | $ 2,865.94 |
| Rubber Stamp | $ 28.00 |
| TOTAL DISBURSEMENTS | $12,409.66 |
| Legal costs (Government Solicitor's Office) | $76,146.60 |
| TOTAL COSTS AND DISBURSEMENTS | $88,556.26 |

(7) The Legal Aid Act 1977 (the Act) imposes secrecy obligations on officers of the Legal Aid Office. Section 92 (2)(a) of the Act provides that it is an offence to divulge or

communicate to any person, any information concerning the affairs of another person acquired by him or her by reason of his or her office or employment. The ACT Legal Aid Office considers that the disclosure of information relating to Mr Eastman's representation could be construed as amounting to a breach of the secrecy provisions of the Act.

No additional funds have been provided by the Department of Justice and Community Safety for Mr Eastman's representation.

(8) See my answer to (7) above.

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## Public relations consultants (Question No 856)

**Mr Smyth** asked the Attorney General, upon notice, on Thursday, 21 August 2003:

In relation to public relations and media related services:

(1) How much money was paid to external (contracted) communications consultants for Public Relations and Media advice and services in each of the financial years 2001-01, 2001-02, and 2002-03;

(2) Answer to Question on Notice No 796 states that the acting Communications Manager was appointed to a temporary position even though they are a non-permanent officer as there was 'no suitable available permanent employee to undertake this specialised work'. How could the Department have come to this conclusion if the position was not advertised;

(3) Similarly, if the position was not advertised, how was the Department made aware of the Acting Manager's availability;

(4) Did the Acting Manager apply for the position, if so did they do it in writing or verbally;

(5) Was the appointment of the Acting Manager made at the request of the Minister for Police and Emergency Services or his office;

(6) Was the appointment of the Acting Manager made at the request of any other member of the ACT Executive or their offices;

(7) How can answer to Question on Notice No 796 claim that there was 'no suitable available permanent employee to undertake this specialised work' when there are at least 24 Public Affairs Officers within the ACT Public Service.

**Ms Gallagher**: The answer to the member's question is as follows:

(1) In the 2000-01 financial year, the amount paid to external (contracted) communications consultants for Public Relations and Media advice and services was $187,495 (provision of communication and advertising services to the ACT Electoral Commission in connection with the 2001 election). In the 2001-02 financial year there was no expenditure and in 2002-03 the amount paid was $4,300.

(2) As indicated in response to Question on Notice No 796, the need for this specialised assistance was urgent. A suitable person was available immediately to undertake this work and so was appointed on a temporary basis, pending the advertising of the position.

(3) The person was attached to the office of the Minister for Police and Emergency Services.

(4) The Acting Manager has now applied for the position, following its advertising in the ACT Government Gazette on 14 August 2003. Applications closed on 28 August 2003.

(5) No.

(6) No.

(7) All Public Affairs Officers within the ACT Public Service were fully engaged with their own duties.

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## Civic Library—rents
## (Question No 857)

**Mr Smyth** asked the Minister for Urban Services, upon notice:

In relation to rents paid by government agencies:

(1) What is the current rent per square metre for the space occupied by the Civic Library;

(2) What was the Civic Library rent (per square metre) in each of the years 1991 – 2002;

(3) How long is the lease on the Civic Library space and what options are available to change the amount of rent charged;

(4) What is the current rent per square metre for the space occupied by the Registrar General's Office;

(5) What was the Registrar General's Office rent (per square metre) in each of the years 1991 – 2002;

(6) How long is the lease on the Registrar General's Office space and what options are available to change the amount of rent charged;

(7) What rent per square metre was charged for the space occupied in the Saraton Building by the Civic Shopfront immediately before it moved to FAI/Eclipse House;

(8) What rent is currently paid by the Civic Shopfront at Eclipse House.

**Mr Wood**: The answer to the member's question is as follows:

(1) The current rent for the Civic Library is $\$467.25 m^2$/per annum

(2) The rent for the Civic Library (per square metre) was:
\$580 from 1990 to 2000, \$440.00 in 2001 and \$452.76 in 2002.

(3) The current lease for the Civic Library commenced in January 2001 and will run until 31 December 2004. Opportunity to change the amount of rent charged occurs when a new lease is negotiated.

(4) The rent per square metre for the space occupied by the Registrar General's Office is currently $260.00m2/per annum.

(5) JACS has advised that prior to 1995 the rent for the Registrar General (per square metre per annum) was $475 for the Plaza level and $355 for level B1.

The rent for the Registrar General's Office (per square metre per annum) was: $355.00 in 1996, $268.13 in 1997 to 2000, $260.00 in 2001 and 2002.

(6) The lease for the Registrar General's Office was for a six year term. The lease expired on 31 December 2002 and is currently on a month to month holdover pending the finalisation of accommodation for the Department of Justice and Community Safety. Opportunity to change the amount of rent charged occurs when a new lease is negotiated.

(7) The rent charged for the space occupied in the Saraton Building for the Civic Shopfront immediately before it moved to FAI/Eclipse House was $580m$^2$/per annum.

(8) The rent currently paid by the Civic Shopfront at Eclipse House is currently $340.00m$^2$/per annum.

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## Development—sustainability reporting indicators (Question No 871)

**Mr Smyth** asked the Chief Minister, upon notice, on 21 August 2003:

In relation to sustainability reporting indicators:

*(1) Has work begun on the Sustainability Reporting Indicators Report (Labor's alternative to State of the Territory), if so, where is work up to? If no why not?*

(2) Will the Community be presented with this Report in 2003, if so, has a deadline been set and what is it? If not, why not?

**Mr Quinlan**: The answer to the member's question is as follows:

Work is progressing on developing an ACT sustainability report. A dedicated team has been established in Chief Minister's Department, to develop the report, which includes members of Policy Group and the Office of Sustainability. This team is liasing with the Sustainability Expert Reference Group.

An issues paper has been developed for release to the community that examines trends in sustainability reporting and poses questions and approaches to assist in the development of an ACT sustainability report. This paper will form the basis of consultation with key stakeholders scheduled for the next two months.

An ACT Towards Sustainability Report will be presented to the community early next year.

## Abbeyfield Disability ACT
## (Question No 877)

**Mr Cornwell** asked the Minister for Disability, Housing and Community Services, upon notice:

> Further to your letter of 5 September 2002 to me that you had requested your department to examine the feasibility of a proposal by Abbeyfield Disability ACT for a co-operative housing arrangement for young people with disabilities. Could you please advise action to date on the proposal.

**Mr Wood**: The answer to the member's question is as follows:

> As advised in response to your question of 6 May 2003, as part of the 2002/3 Community Housing Funding process, a proposal for construction of a cooperative housing arrangement for people with disabilities, which was submitted by Community Housing Canberra in conjunction with Abbeyfield Disability ACT, $1.1m was approved for funding.
>
> A suitable site has been identified and Abbeyfield Disability submitted an application in August 2003 to the Land Development Authority for a direct grant of land for this project.

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## Electricity and gas rebates
## (Question No 880)

**Mr Cornwell** asked the Treasurer, upon notice (redirected to the Minister for Disability, Housing and Community Services):

In relation to the difference in the electricity rebate and the gas rebate for pensioners:

1. Is it a fact that the electricity rebate and the gas rebate for pensioners is substantially different?

2. What is the annual rebate in each case;

3. Why is there such a financial difference between the electricity and gas rebates;

4. Is action being taken to narrow this financial gap and if so, what action is being taken.

**Mr Wood**: The answer to the member's question is as follows:

1. Electricity rebates are a component of the ACT Government Concessions Program. A rebate for gas services is independently provided by AGL to pensioners.

2. The annual electricity rebate provided by the ACT Government is $151.35 and the gas rebate provided by AGL is $14 per year.

3. The rebate levels in the ACT Government Concessions Program are historically based and determined by the ACT Government, while AGL are independently responsible for the level of their concessions.

4. The Chief Minister's Department is currently co-ordinating a review of the ACT Government Concessions regime. Information from the review will inform future Government decisions on the ACT Government Concessions Program.

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## Housing complexes—community rooms (Question No 889)

**Mrs Burke** asked the Minister for Disability, Housing and Community Services, upon notice:

In relation to community rooms in ACT public housing complexes:

(1) Supply details of all community rooms (or similar facilities) located within all ACT public housing properties, including location of each place within the complex;

(2) List all complexes which presently do not have such a facility;

(3) Further to (2), why is such a facility not provided at each such complex and what arrangements are being made for this situation to be rectified;

(4) List all complexes which have such a facility but do not use the facility at present;

(5) Further to (4), in relation to each location:

(a) for what reason(s) is the facility not in use;
(b) what needs to be done to address this situation;
(c) when is it proposed that the facility will be operating again;

(6) In relation to each location currently being utilised, specify all government agencies and programs involved in the use of such facility;

(7) What is current government policy in relation to community rooms in public housing complexes.

**Mr Wood**: The answer to the member's question is as follows:

(1) Bega Court, Reid
Northbourne Flats, Turner
Gowrie Court, Narrabundah
Red Hill Flats, Red Hill
Kurralta Court, Waramanga
Elmsall Court, Oaks Estate
Currong Flats
Stuart Flats
Fraser Court, Kingston

(2) All Housing ACT complexes not listed at (1) above do not have a community room at this time.

(3) The provision of a community room is a matter between Housing ACT and the residents of the complex.

(4) The complexes listed at (1) above have a community room. Housing ACT's understanding is that the rooms are all used.

(5) If a community room is not in use it is a matter for the residents of the complex.

(6) This is a matter for the community of the complexes.

(7) As part of its work with tenants Housing ACT will make available a community room at complexes where the community of the complex indicates a desire to use one. The provision of a community room will not unduly affect Housing ACT's capacity to provide residential stock to eligible applicants.

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## Youth Legal Referral Service (Question No 896)

**Mr Stefaniak** asked the Attorney General, upon notice, on Wednesday, 27 August 2003:

In relation to the youth legal referral service:

(1) How many requests for assistance did the Youth Legal Referral Service receive for the following months:
(a) May;
(b) June;
(c) July;

(2) In what percentage of requests did the service:
(a) assist the client;
(b) not assist the client;
(c) case still in progress;

(3) What were the most common issues youth needed this service for in this three month period;

(4) How much longer does the Attorney General expect this pilot program to operate.

**Ms Gallagher**: The answer to the member's question is as follows:

(1) During the months of May, June and July the Youth Legal Referral service dealt with 76 requests for assistance.

(a) 34 requests in May;
(b) 22 requests in June;
(c) 20 requests in July.

(2) The service was able to assist in 100% of all cases.

(3) The most common issues dealt with by First Stop involved drink driving, apprehended violence orders, employment and debt.

(4) The length of the project will depend upon the views of the participants, Clayton Utz, ANU Law School, Legal Aid (ACT) and the Youth Coalition.

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## CountryLink—train fares (Question No 903)

**Mr Cornwell** asked the Minister for Planning, upon notice:

In relation to the increase of CountryLink train fares by an average of 5% as declared by the NSW Government to come into effect 31 August 2003 (*Sydney Morning Herald*, 27 August 2003, page 10):

(1) Will a price rise also be applied to services departing from the ACT or to passengers embarking upon or booking a train journey within the ACT;

(2) If yes, then what will the price rise be and when will it be implemented;

(3) What are the current fares for CountryLink train services departing from the ACT.

**Mr Corbell**: The answer to the member's question is as follows:

(1) The Countrylink Customer Service Centre provided advice on 29 August 2003 that a price rise will also be applied to services departing from the ACT or to passengers embarking upon or booking a train journey within the ACT.

(2) This is a matter that falls under the responsibility of the NSW Government.

(3) The Countrylink Customer Service Centre is unable to provide a list of fares for all services departing from the ACT. However, this information is available from the Countrylink website at http://www.countrylink.info/timetable/. The Countrylink fares for services departing the ACT to Sydney, Melbourne and Brisbane are as follows:

| | | |
|---|---|---|
| Canberra Station to Sydney | $47.30 economy | $ 67.10 First class; |
| Canberra Station to Melbourne | $90.20 economy | $122.10 First class; |
| Canberra Station to Brisbane | $128.70 economy | $181.50 First class |
| | $258.50 sleeper | |

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## Disabled persons—services (Question No 908)

**Mrs Burke** asked the Minister for Disability, Housing and Community Services, upon notice:

In relation to the Board of Inquiry into Disability Services – Final Report Parts 1 and 2, can the Minister:

(1) Advise in relation to recommendation number 18, on Page 42 of the Report, the current position in relation to the development and implementation of the strategy to attract and retain care workers in the disability sector;

(2) Advise of the consultation and communication strategy now currently demonstrated by the Disability Program towards clients, parents and guardians;

(3) Advise as to the Government's and Department's attitude towards the 'Group House' model of service delivery to clients in the disability sector;

(4) Explain the interface and relationships that now exist in relation to client/family participation with the Program, the service and the individual, as stated in the terms of reference Page 21 of the Report;

**Mr Wood**: The answer to the member's question is as follows:

(1)-(4)

The Government has outlined, in detail, its response to the recommendations of the Board of Inquiry into Disability Services. This was tabled in the ACT Legislative Assembly on 26 September 2002.

In responding to the recommendations of the Board of Inquiry, the Government sought and received advice from the Disability Reform Group which included people with a disability, family members of people with a disability, service providers and peak agencies as well as Government representatives. This process has been important in terms of involving people with disabilities in the reform process.

When I tabled the Government's response, I undertook to provide six-monthly updates to the Legislative Assembly on progress in implementing those recommendations accepted by the Government. The first progress report was tabled in the Legislative Assembly in April 2003 and I will be tabling the second progress report in the September 2003 sitting period. These reports demonstrate the significant progress that has occurred in implementing reform in the area of disability services in the ACT.

In implementing the reforms, the Government has established the following disability reform working groups to address specific issues. These working groups involve government and non-government members, including people with disabilities, and have determined workplans to address how best to implement the reforms. The working groups provide advice to the Department of Disability, Housing and Community Services on the priority areas for action.

- Access, Eligibility and Funding Working Group
- Legislation Reform Working Group
- Workforce Working Group
- Quality and Standards Working Group
- Housing and Tenancy Working Group

The Government's response and the six-monthly progress report can be accessed via the

Department of Disability, Housing and Community Services' website (www.dhcs.act.gov.au/DisabilityACT/Publications/Publications.htm).

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## Disabled persons—services (Question No 909)

**Mrs Burke** asked the Minister for Disability, Housing and Community Services, upon notice:

In relation to the Board of Inquiry into Disability Services – Final Report Parts 1 and 2, can the Minister:

(1) Outline the training regime in place for all personnel now involved in the Disability sector at all levels;

(2) Advise how the Government is addressing issues concerning:

(a) the high turnover of staff (casual, permanent casual and full time);
(b) the ability of the sector to attract and/or retain appropriately qualified staff;
(c) quality training of staff to better manage client behaviour;

(3) Advise how the Disability Program has responded to improving flexibility in responding to the needs of service users.

**Mr Wood**: The answer to the member's question is as follows:

(1)-(3)

The Government has outlined, in detail, its response to the recommendations of the Board of Inquiry into Disability Services. This was tabled in the ACT Legislative Assembly on 26 September 2002.

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