DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

FIFTH ASSEMBLY

WEEKLY HANSARD

10 FEBRUARY

2004

Tuesday, 10 February 2004

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

Petitions

The following petitions were lodged for presentation:

Windeyer Court

By **Mrs Burke**, *from 99 residents*:

> To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory.
>
> This petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that:
>
> The Residents of Windeyer Court in Watson strongly object to the removal of security screen doors from their homes.
>
> Your petitioners therefore request the Assembly to:
>
> Reassess the situation in relation to security screen doors and investigate other options and alternatives in order to protect the residents' personal security and safety whilst in their own homes.

Karralika facility

By **Mrs Cross**, *from 1,258 residents:*

> To the Speaker and members of the Legislative Assembly for the Australian Capital Territory.
>
> The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly:
>
> The proposed large scale redevelopment of the Karralika Drug Rehabilitation Centre at 256 Bugden Ave, Fadden (Block 1, Section 399).
>
> Your petitioners therefore request the Assembly to:
>
> Cease any development and enter into immediate discussion and effective consultation with the community regarding the size, nature and details of the project.

The clerk having announced that the terms of the petitions would be recorded in Hansard and a copy referred to the appropriate minister, the petitions were received.

Deputy clerk and serjeant-at-arms—appointment

MR SPEAKER: I wish to advise the Assembly that Mr Max Kiermaier has been appointed to the position of deputy clerk and serjeant-at-arms of the Assembly.

Privilege
Statement by Speaker

MR SPEAKER: Members, on 14 January 2004, Mr Hargreaves gave written notice of a breach of privilege or a possible contempt in respect of the release of a flyer relating to a matter before the Standing Committee on Planning and Environment. In his letter, Mr Hargreaves provided a copy of a flyer that, he claimed in his letter, had been circulated by the chair of the committee, Mrs Vicki Dunne MLA.

Under the provisions of standing order 71, I must determine as soon as practicable whether the matter merits precedence over other business. In doing so, I have to consider whether the issue is one of substance and is supported by the facts as presented. If, in my opinion, the matter does merit precedence, I must inform the Assembly of the decision, and the member who raised the matter may move a motion without notice forthwith to refer the matter to a select committee appointed by the Assembly for that purpose. As Speaker, I am not required to judge whether there has been a breach of privilege or a contempt of the Assembly. I can only judge whether a matter merits precedence.

Having considered the flyer and Mr Hargreaves's complaints, I am prepared to allow precedence to a motion to refer the matter to a select committee that would deal with it.

Privileges—Select Committee
Appointment

MR HARGREAVES (10.32): I move:

> That:
>
> (1) pursuant to standing order 71, a Select Committee on Privileges 2004 be appointed to inquire and report on whether the actions of the Chair of the Standing Committee on Planning and Environment with regard to the distribution of a flyer in her name at the Belconnen Markets did constitute a contempt of the Assembly through improper interference in the work of the Standing Committee on Planning and Environment;
>
> (2) the Committee be composed of:
> (a) one Member to be nominated by the Government;
> (b) one Member to be nominated by the Opposition; and
> (c) one Member to be nominated by a Member of the ACT Greens, the Australian Democrats or the Independent Member;
> to be notified in writing to the Speaker by 4.00 pm today; and
>
> (3) the Committee report by the first sitting day in April 2004.

I move this motion, not with any pleasure, but rather with some regret. First, a snapshot of the facts is necessary for members to gain an appreciation of this issue and the gravity of its implications. In bringing this matter forward, I considered the events, the perceptions and not only the issue of an inquiry which had been threatened, but also the more serious issue of a possible contempt of the Assembly. In other words, I separated the specific issues of the inquiry and the effect of the event on the integrity of the parliament.

Mr Speaker, in arriving at a decision to seek your ruling on whether the matter warranted precedence, I spoke to the clerk and sought his informal advice on whether, according to standing orders and House of Representatives practices, the actions of the chair of the Standing Committee on Planning and Environment presented a prima facie case of contempt. The clerk advised me to put the case to the Speaker and it would follow that the Speaker would seek his advice on the matter of precedence. I assume that, since you have determined that it does warrant precedence, sufficient concern exists to have the matter considered by a select committee on privileges.

The essence of the issue is that, after an inquiry had been adopted by the Standing Committee on Planning and the Environment that was to consider whether a cut-price supermarket should be allowed in the precinct of the Belconnen markets, the chair of that standing committee distributed flyers at the markets which contained the following words in the third passage, "I would like to see…Aldi and the Belconnen markets working well together, to benefit traders and customers." These words indicate a preference for such a supermarket presence before conclusions were reached by the committee.

The flyer also contained the words:

> Many of you will have signed petitions asking the Assembly to let Aldi build this supermarket. As a result, the Planning and Environment Committee, which I chair, is holding an inquiry into the decisions that have—

I emphasise the next few words—

> obstructed this project, threatening the long-term future of the Belconnen Markets.

These words indicate the strength of the chair's preference for the outcome of the inquiry, and the use of such strong language indicates that she had adopted a position contrary to that of the government. It can be argued that members of standing committees in the course of an inquiry should present an unbiased outlook and indicate to the community that the committee's considerations will be independent and unbiased. The use of the chair's position in this passage indicates to the public that she would use her seniority on the committee to influence the result.

The following words also appeared in the flyer:

> To help bring Aldi to the Markets, write to
>
> The Secretary
> Planning and Environment Committee
> GPO Box 1020 Canberra 2601.

This is clearly an exhortation to the public to mount a campaign to achieve a result in the inquiry. It involves the committee secretariat in that campaign and the campaign is intended to influence the committee, which constitutes, in my opinion, an improper interference with the work of a committee of the Assembly.

With regard to the implications of the flyer for the actual inquiry, there was, in my opinion, sufficient justification for the inquiry to be aborted, sufficient indication that the integrity of the committee in the conduct of the inquiry was compromised, and sufficient indication that the community's perception of bias by the committee was real. Indeed, the constituent who brought the matter to my attention indicated that it was considered by people to whom he had been speaking that there was no point in making submissions, because the committee's mind had been made up.

When I brought the matter to the committee, members agreed with my concerns. The chair indicated that if there was significant feeling in the community that the inquiry had a predetermined position—and comments from members indicated that this appeared to be so—she would withdraw from the inquiry. She apologised for what she described as an inept attempt to act in the context of a local member and communicate with her electorate on an issue of concern to it.

Her withdrawal was accepted, as was her apology, and the committee resolved to issue a letter to those who had been approached by the committee to submit their case indicating that the chair had withdrawn from the inquiry, to ensure that the integrity of the inquiry was intact. A media release to this effect was also released by the chair. Mr Speaker, as far as I am concerned, this action on the part of the chair was honourable and, one hopes, has restored the confidence of the community in the committee's deliberations on this particular issue.

However, Mr Speaker, it does not remove the notion of a contempt of the Assembly. There is an overlay with regard to this issue. I contend that the chair's action in mounting a campaign to achieve a result in an inquiry by a committee of which she is chair and the use of the committee secretariat in that process constitute more serious offences against the Assembly.

The issue of the flyer shows, in my opinion, that the chair was prepared to interfere in the work of her own committee to achieve a political result. I contend that the issue of the flyer constitutes a serious interference in the work of the committee in that the inquiry came close to being aborted, the integrity of the committee system has been compromised and the very essence of the Assembly has been compromised.

Further, the chair has, by this action, betrayed the trust of the community, the members of the committee and the Assembly itself. The matter is made worse because the chair carries the responsibility of the opposition spokesperson on planning. The inquiry was all about a planning issue and the chair has compromised the committee by not separating her roles of committee chair, opposition spokesperson on an issue before that committee and local member.

Mr Speaker, this is a very serious matter. It goes to the integrity of the committee system and, indeed, to the integrity of the Assembly itself. This issue is one of damage to the

community's concept of trust in its parliamentary institutions and that trust has been compromised. It has been compromised by a member who has been entrusted with a senior position, that of committee chair, and yet who has used that position to achieve an outcome in an inquiry. In doing so, that member has not only jeopardised that inquiry, but has also jeopardised the trust the community may have in the integrity and the independence of an Assembly committee.

Page 706 of *House of Representatives Practice* says that an improper interference in the work of a committee constitutes a contempt of the parliament. The only course of action now is to convene a select committee on privileges to consider whether there has been an act which constitutes a contempt of the Assembly. It should be noted that the principal role of the committee is to determine whether such a contempt did occur and report to the Assembly. Should a committee find that such a contempt did occur, it is not necessary that it recommend a sanction or other action, but it can do so if it desires. The committee would consider the seriousness of the act and I would contend that this act by a chair of a committee is a serious one indeed.

Mr Speaker, I think that the evidence is simple. The proof is contained in the text of the flyer and thus the time taken by a privileges committee inquiry could be quite short. I believe the committee should be able to report to the Assembly by the first and only sitting day in April 2004.

Mr Speaker, I commend the motion to the Assembly.

MR SMYTH (Leader of the Opposition) (10.42): Mr Speaker, contempt is a very serious issue and, when referring issues to a select committee to establish whether a contempt or breach of privilege has occurred, Mr Hargreaves rightly talks of improper interference, but should also have mentioned intent. When we go to these issues, we have to be certain that, should we establish this committee, we have in our minds a very clear purpose—establishing that the intent was deliberate, that the interference was real and that, I believe, the member has made no amends to rectify the situation, which may have simply been the result of an error of judgment.

You have to look at what is happening here. It becomes a tit for tat now, where we had a committee that considered contempt and a member of the Labor Party, a minister, was found guilty of contempt of the Assembly—Minister Corbell. This is their opportunity: "Let's fly back in and let's play politics with the integrity of the Assembly." Hey, we are politicians! It is our occupation but, when you look at the argument that Mr Hargreaves has attempted to establish, you will find that he throws Mr Corbell back into the melting pot, because apparently Mrs Dunne's sin is that she has expressed a view or preference and has threatened a process, but Mr Corbell has expressed a view—

MR SPEAKER: Order! You might be reflecting on a vote of the Assembly there, Mr Smyth. I caution you against that.

MR SMYTH: No, I am not. I am about to refer to Karralika, Mr Speaker. I will move straight onto Karralika where there is a process set up, established by an act of this place, and where the minister has said, "We will have some consultation but I have already determined the outcome. I am going to call it in."

Mr Corbell: Point of order, Mr Speaker: Mr Smyth should address the substance of the matter, which is the proposal that the actions of Mrs Dunne be referred to a committee of privileges.

MR SPEAKER: Order! Point taken.

MR SMYTH: The comparison is real because—

MR SPEAKER: Mr Smyth, remain relevant.

MR SMYTH: It is absolutely relevant because members are entitled to urge the community to participate. Indeed, all the committee members have, I believe, a role, a right and an obligation to urge the community to participate in the committee process. If we are going to take that right and obligation away from committee members, then you have to question what it is that the committees are seeking to achieve.

Mr Hargreaves then goes on with his weak argument to say that then we have this terrible overlap. We all have the terrible overlap: there are only 17 of us and the comparison is that I am on the Public Accounts Committee, but I have two other chairs as members. There is overlap in everything everyone does in this place every day, simply because of the smallness of the Assembly. If overlap is a sin, then we are all going to be guilty of a sin.

However, he takes it further: he says that it overlaps with Mrs Dunne's role as the opposition spokesperson for planning. Isn't that interesting? Mr Hargreaves, in opposition, used to be on the JACS committee looking at law and order issues. Who was the law and order spokesperson for the opposition at that time? Mr Hargreaves. To have that sort of overlap is unavoidable in an Assembly of this size.

However, you also have to look at what happens when matters are brought to your attention. I understand that some members were not very concerned about this, but obviously Mr Hargreaves was. However, what has Mrs Dunne done since it occurred? I understand that the committee has written to all those who made submissions asking whether they are concerned about this. I understand there has not been a single response; so it does not appear that the community is concerned about this. Mrs Dunne has also stood aside, which is something Minister Corbell refused to do and never did when he was accused of contempt. If you cannot establish intent and you cannot establish improper interference, you should not be having a select committee to consider contempt.

The problem here is that the politics would get in the way. Here we are with Mr Hargreaves willing to cause the opposition some grief. He has taken his opportunities as they have presented and we accept that. That is politics. That is what we do in this place. But what we have to do, members, through you, Mr Speaker, when we refer something to a committee that considers contempt, and very few committees concerned with contempt have been established in this place, is we have to be certain in our own minds that this was intended, that we can establish the intent—I find no case for that established—and that it really was improper interference.

It would be no secret to anyone in this place that the Liberal Party has an opinion on what should happen at the Belconnen markets—surprise, surprise! However, urging people to express themselves simply because you occupy the position as the opposition spokesperson on something, because you are a local member for that electorate, or because you happen to be on the committee and happen to be the chair of the committee, should not be a crime. If this goes ahead it would be an intolerable burden for all committee chairs.

Mr Speaker, there is no case established. Let's look at the facts. Mr Hargreaves opened with the old cliche, "I do this more in sadness…", but let's face it, this is politics. The flyer just tells people the truth: the ACT government seems determined to stop Aldi building a supermarket next to the Belconnen markets, because it would undermine the retail hierarchy. That is a fact. The government has announced Aldi sites at Kippax and Conder, but it seems the markets will miss out. That is a fact.

The member then says:

> I would like to see the markets prosper and continue to provide great service to the people of Belconnen…

There is nothing wrong in that. The flyer continues:

> …a good spread of Aldi stores to provide competition in the grocery market…

I do not believe that there is contempt or a privilege issue in that. It continues:

> …Aldi and the Belconnen Markets working well together, to benefit traders and customers.

It is another retail section where you could put another retail outlet.

"Many of you have signed petitions asking the Assembly to let Aldi build this supermarket": that is a fact. We have all seen the petitions tabled here. "As a result, the Planning and Environment Committee…is holding an inquiry into the decisions": that is a fact. The full sentence says:

> As a result, the Planning and Environment Committee, which I chair—

she has declared her position, she is not hiding the fact that she is the chair, so that people can be clear about where she stands in this process, and that is a fact—

> is holding an inquiry into the decisions that have obstructed this project, threatening the long-term future of the Belconnen Markets—

which many people have asserted. You have a series of facts, none of which I think would be disputed, and yet we are suddenly thrust into this issue of contempt and privilege for the sake of politics. The rest of it just talks about how you might contact the committee. We all have opinions, we all express those opinions outside committees all the time and we often express those opinions inside committees as well. Are we seriously

going to say that, on these issues, when approached by the community, we cannot go out and say where we stand?

This is a ridiculous motion, Mr Speaker, because it does not address the issue of intent. What did Mrs Dunne intend by doing this? She wanted more submissions from the community. What is wrong with a committee seeking more submissions? We have, on numerous occasions, either in this place or outside while people are sitting on inquiries, had members expressing opinions about where their party stood on an issue. That is entirely appropriate—they should and they must. If we are all going to be victims of the fact that this is a small Assembly, then we seriously need to look at the committee system, because this motion will neuter the Assembly system of committees as it will prevent people doing their jobs.

You might make a small case, Mr Speaker, that perhaps there was a lapse of judgment. If that is the case, you then have to look at what occurred when it was brought to the attention of the member. Redress was made. Mrs Dunne will stand aside from the chair for the duration of this inquiry. She is quite willing to do that. The committee, I understand, has resolved to write to all those who have been affected to ask what they want. Not one, it is my understanding, has responded to the committee question, "Do you feel slighted, affected, somehow compromised or denied natural justice or feel that you will not get a fair hearing or that you will get a warped view from the committee?" None have responded.

Mrs Dunne occupies a quarter of the committee's voting capacity. Three other members have the right to vote. This position on Aldi that she has adopted on behalf of the Liberal Party, which any of us would have enunciated—Mr Stefaniak has, I have, we all have—she has enunciated several times on our behalf, outside the place, even inside the place, so you do not have the intent. I do not believe you have a case proven that there has been any improper interference, and I do not believe that what we will get out of this will be of any value in regard to how the Assembly operates or of any value, in particular, in regard to how the committee system operates.

The opposition will be opposing this motion.

MS DUNDAS (10.52): I rise to speak briefly. When we have a matter of contempt and a matter of privilege before us I think it is important that we put on the record why we vote the way we do. Mr Smyth has raised some interesting points about whether or not we can establish the intent behind the production of this leaflet, and whether or not we can answer the question of whether it was improper interference. I think that is why we need to have a committee of privilege to look into this, so it can fully explore what the member was intending when this leaflet was circulated, and whether or not it did interfere not only with the work of the committee, but with the standing of the committee in the community.

I think those questions are best answered by an inquiry into privilege, as would be proper practice here and in other Assemblies. However, I think this debate and the time that it will take has shown the need to fast-track the implementation of the recommendations of privileges committee number 2, which included recommendations about changing the way privileges committees are established and operated. I hope these will allow us more time here in the Assembly to debate legislative issues.

I do believe that we need further investigation to fully explore the impact of this leaflet on the work of the committees here in the Assembly, to try to work through the possible damage that has been done and, if possible, work to undo it.

MR STEFANIAK (10.53): Mr Speaker, it is thankfully somewhat rare that matters are referred to privileges committees. I think in a case like this—and I listened with interest to what Ms Dundas was saying—that really the Assembly does need, at this stage, to look at whether in fact there is a prima facie case. If there is a prima facie case, then the matter should go to a privileges committee. I would suggest that, in this matter, there is absolutely no prima facie case.

In fact, what happened is fairly simple. Mr Smyth has gone through the particular pamphlet that Mrs Dunne handed out in good faith. She stated, I think, in her media release—

Mrs Dunne: No, that did not go out.

MR STEFANIAK: Oh, that did not go out. I understand that she certainly stood aside from the committee as soon as she realised that there was something in the document that should not have been there. At that point in time, she took appropriate steps to stand aside and indicated that she would stand aside.

Mr Stanhope: Like a conflict of interest? Like politicising the committee system?

MR SPEAKER: Order, members! Mr Stefaniak has the floor.

MR STEFANIAK: I think that is quite appropriate. Mr Smyth is quite right to look at intent because quite clearly, on the evidence here, there is no prima facie case. She put out a document in good faith. She was the spokeswoman of the party for that matter and this was an issue in her electorate. When it was drawn to her attention that there was something in the document that really should not be there, she immediately took steps to do the right thing, which she has done. Quite seriously, that should be the end of the matter.

I do not think a prima facie case has been established here which would warrant this matter going to a privileges committee. Privileges committees occur fairly rarely. This would only be about the second or so in the life of all the five Assemblies we have had to date. Members should not treat this as in the past they have treated things such as censure motions, which were a dime a dozen in the late 1990s. I think Tony de Domenico had about 15 against him in one year. That devalues the currency. We certainly should be very careful of devaluing the currency of privileges committees, because they are used rarely in all parliaments and they have been in this little parliament.

I do not believe a prima facie case has been made out here. It is quite obvious what has occurred. Mrs Dunne took the appropriate steps when the matter was drawn to her attention. We have had instances of members doing that, too, in the past. I can remember that, earlier in this Assembly in a fireworks inquiry, there were some concerns expressed in relation to views Mr Hargreaves had made known. We investigated that. Ms Tucker

and I looked at those issues and talked to Mr Hargreaves. We decided, having talked to him, that he should continue sitting on the committee. Those issues do arise from time to time.

Here, an issue has arisen when Mrs Dunne put out this document in good faith and, as soon as it was brought to her attention that there was something remiss, she did the proper thing in relation to her committee and took the appropriate steps. I think that should be the end of the matter.

MS TUCKER (10.57): I was hoping that Mrs Dunne would speak because I am a little unclear about the Liberals' position on this motion. Mr Smyth has said that he feels that it was not a contempt of the parliament; it was just encouraging people to participate in the committee process. So, on one hand, they seem to be saying that it is not even an issue but, on the other, they are saying there was a lapse of judgment—and clearly there was understood to have been a lapse of judgment by Mrs Dunne because she chose to stand aside, or is that not the case? Is it that she stood aside even though she did not feel that she had interfered with the committee process, but felt she had to stand aside because of the views of the rest of the committee? I do not know quite what her position is.

If there is, in her view, a reason for her to stand aside, which is that she thinks her action was, in fact, inappropriate and could be seen as a contempt, then if she said that in this place perhaps we could save some time and not go through a committee process at this point. The committee, obviously, would always have within its power the capacity to elect another chair or whatever, if it felt strongly about the matter. The whole Assembly could also have that debate, depending on how seriously people regarded the issue, but also on how seriously they regarded the apology or the statement from Mrs Dunne, whatever that might be.

However, I do think that the last sentence, which is, "To help bring Aldi to the Markets, write to The Secretary, Planning and Environment Committee", and the fact that Mrs Dunne acknowledged that she is the chair, means that she has crossed the line between her role as spokesperson for planning for the Liberal Party and the role of chair of the committee. I think that is an issue of concern. I take Mr Smyth's point that it is quite difficult sometimes to work out quite what is appropriate and what is not appropriate in the circumstance. It is true, as Mr Stefaniak said, that we had a similar incident with Mr Hargreaves on the fireworks inquiry.

I know that, as chair, I will encourage people to put submissions in to a committee inquiry and, if I see a particular view not being represented in an inquiry, I might say that I am aware that there is this view in the community but we are not really hearing it. I think you could say, therefore, that I was soliciting particular views, and the aim of that would be to bring a complete picture to the work of the committee.

In this situation, however, it is fairly clear that, as chair, Mrs Dunne has put a very clear point of view about what she wants the result of that inquiry to be. Quite often we will have a position on the issue in committee work. We all have our views and we will potentially have party policies on the subject, so there is no way that we can pretend that everyone goes to an inquiry in a neutral state. What we try to do is to set aside our views

enough to allow us at least to hear what other people are saying and to allow our views to be challenged. That is what I have always felt we have to be able to do in the committee process.

That does often happen and we get very interesting results from that process when people are open-minded. I remember on the select committee that we ran on housing, Mr Wood supported recommendations that were not supported by the Labor Party at the time. He knew he had the freedom to do that within the committee process. It did not mean that that was a terrible compromise and it was a big shame or embarrassment for Labor at the time: it meant that Mr Wood had participated in that inquiry as an independent person and did come to the conclusions that he came to. His party then had the job of listening to what he said, looking at what the committee said, and coming up with its own conclusions. That is the strength of the committee system.

What we have ended up with here is a situation where, as I said, Mrs Dunne has not spoken. She may want to speak now, which might help inform my vote, but at this point in time I would have to say that we probably need to have a privileges inquiry. If Mrs Dunne were to speak about her views and whether she felt it was clearly a contempt, and she was prepared to acknowledge that, then there is the potential for the Assembly to deal with it without going through that process. However, I do think it is a serious issue and I do think that, at this point, it looks as though there could have been interference with the work of the committee.

MRS DUNNE (11.03): I deliberately held back to speak, Mr Speaker, so I would not take up the time of the Assembly by seeking leave to speak again if it became necessary. As members will note, there is a motion scheduled for later in the day in relation to the Planning and Environment Committee. That motion is to allow me to stand aside from the inquiry of the Planning and Environment Committee into the Belconnen markets and the petition in relation to the Belconnen markets. The motion reads:

> That Mrs Dunne be discharged from attending the Standing Committee on Planning and Environment for that Committee's consideration of the inquiry into the building of an Aldi supermarket next to the Belconnen Markets.

I did that when, after I returned from leave, it was raised with me that the brochure that is the subject of debate was the cause of some concern to a member. I think I need to go back a bit: this brochure was circulated on the last weekend in November at the Belconnen markets, when I was about my usual constituency activity on Saturday mornings, which is visiting shopping centres. It happened that we were scheduled to be at the Belconnen markets.

I thought, on the day before I was going to the Belconnen markets, that as I was going to the markets and that, as this was a matter of particular interest to the people who shop there, I should provide some information to inform people of what was happening, because there had not been very much media coverage of the fact that there was a committee inquiry. Although the committee had written to the stall holders and the owners of the building, and to stall holders and shopkeepers in surrounding areas, 3,000-odd people had signed petitions in relation to the building of an Aldi at the Belconnen markets. I thought that this would be a small attempt to communicate with

some of those 3,000 people, to let them know what had happened as a result of their signing the petition.

I put together a brochure in my office and it was circulated. I think there were about 200 copies. Some of the stall holders at the markets came to me and we were discussing the issue. They asked to take away some of the brochures, which they kept on their counters. After I had left, I presume that they continued to circulate those. I understand that Ms Dundas, for instance, obtained one quite close to Christmas, so they were still circulating some time later.

For the information of members, the intention was simply to inform some of the people who had signed petitions in a small way about what was happening, so that they could keep their interest going in an issue that was before the committee. I put this pamphlet together in my capacity as the member for Ginninderra. As a candidate in two elections in the electorate of Ginninderra, I have been on the public record since 1997 as being in favour of the building of Aldi supermarkets, because of the impact that it will have on competition. I have also been on the public record for some time in favour of the building of an Aldi supermarket at the Belconnen markets.

So I put together a brochure that says, "This is what the government thinks and this is what I think. You people have signed a petition and, as a result of this, this is happening." Here, I made a mistake and this is the mistake for which, when it was drawn to my attention, I immediately went to the Planning and Environment Committee and apologised. First of all, I apologised and I offered to withdraw from the inquiry, because it was put to me that, by saying as I did, "As a result, the Planning and Environment Committee, which I chair, is holding an inquiry", I had crossed the border between being the member for Ginninderra and the chair of the Planning and Environment Committee, and confused those roles. I do not deny the fact that, in doing so, I confused those roles.

When it was drawn to my attention that that is what I had done, I apologised to the members of the committee and we set about a process of ensuring that no harm was done to the committee process. I did not put up a fight and say, "No, this is all nonsense. I immediately admitted my mistake and I do that freely and unequivocally here. I made a mistake. There was no intention to interfere in any way with the proceedings of the Planning and Environment Committee, and there was no intention to interfere with the workings of this Assembly. As a mark of that, I took what steps I could immediately it was drawn to my attention. The fruition of that is the motion that will be moved later in the day.

As I have done to my colleagues on the Planning and Environment Committee, I apologise to the members of this place now unequivocally for that blurring of the distinction. However, I will say in my defence that it is, as Mr Smyth said, a very difficult thing to do to wear the number of hats that we do in this 17-member Assembly. I am the member for Ginninderra first and foremost. I represent my constituents and I try to carry out their will. There is clearly a wish in the community that such a supermarket should come to the Belconnen markets and I support the community in that, and I have been public in doing so.

The intention, as I said before, was to inform people whom I otherwise could not contact conveniently. I do not think that it would be reasonable for us, as the Planning and

Environment Committee, to have asked our secretary to write to the 3,000 people who signed the petition that sparked the inquiry in the first place. That would have been an unwarranted use of the resources of the Legislative Assembly, so I put together 200 pamphlets or thereabouts—I think it was 200 pamphlets—with the intention of trying to communicate with some of those people.

But there is an overlap. I am also the ACT Liberals' spokesperson on planning and environment—and the ACT Liberal Party has views about Aldi—and I am the chair of the committee. However, as I said to my colleagues at the time, and I do not resile from this, to think that, because I expressed this view here, somehow three other intelligent people who hold strong private views, some of which coincide with mine, would be cowed into changing their views or coming up with a recommendation that was inconsistent with the evidence is beyond belief.

We have four strong-willed, intelligent people on the committee who express their views on a regular basis. Those views had been expressed by most of those people in the public arena prior to this inquiry being sent to the committee. I think that members were right when they said to me that, once it came to the committee, we should not have spoken publicly. That is the breach of protocol, that is the lapse of judgment, that is at the heart of this and that is the lapse of judgment for which I have apologised. It is very difficult to wear all those hats and in this case I think I failed. In the great scheme of things, it is not a very big failure and it is a failure that I owned up to straightaway.

Ms Tucker has said that I did stand down and she wanted to know my motivation. My motivation, for the information of the Assembly, was that I wanted to remove all possible perception of bias. Once it was brought to my attention that there was a perception of bias, I needed to remove that for the good of the Assembly, for the good of the committee and so that no-one could criticise the report. However, the trouble is that every time that the Planning and Environment Committee goes into an inquiry, its members have already expressed their views on the subject, probably more so than the members of any other committee. I draw your attention to draft variation 200, on which most of the members had expressed views about the outcome.

Sometimes members change their views in the process of the inquiry. *(Extension of time granted.)* As I have said in this place on a number of occasions, I am particularly proud of the Planning and Environment Committee and its members' capacity to leave their ideologies at the door. Had we ever gone through the process of having a full inquiry—and the committee will continue to conduct an inquiry—I am sure that the members would have left their private views at the door, as I would have done. However, to ensure that there is no doubt about that, I have stood aside.

The Chief Minister interjected that I had a clear conflict of interest, but I do not have a conflict of interest. I have an interest in the subject, but that is not a conflict of interest. That interest is an opinion. I do not have any pecuniary interests whose outcomes will be favoured by this. I have an opinion about the subject; that is not a conflict of interest.

What has been done was, on my part, lacking in judgment and I apologise again for that. However, I think that, seeing that there was clearly no intent to subvert the activities of the committee—because I hold the committee system in very high esteem—and given

the amount of work that was done by the clerk and the committee secretary to ensure that everything was put right, there has been no interference in the operation of the committee.

Criticise me for a lapse of judgment but do not turn the issue of privilege and contempt into a political football. Although Mr Hargreaves's hand is on his heart—"more in sorrow than in anger"—this matter is really more about politics than anything else. It is easy now because Mr Corbell has been before a committee on contempt and certain findings have been found, and this seems to be a tit for tat process.

MR SPEAKER: Mrs Dunne, you should not reflect on an earlier vote of the Assembly.

MRS DUNNE: I was not reflecting on an earlier vote of the Assembly. I am reflecting on what is the likely outcome of this vote, Mr Speaker, and I think I am allowed to do that. All I can say is that there was no intent to interfere and, when the failing was brought to my attention, I acted immediately to fix it.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (11.15): First, I agree with Mrs Dunne that the smallness of this place does make it difficult for all of us in that we have to play a number of roles. That is a part of the game. I would also like to congratulate her on a well-crafted defence, not at all assisted by the crooked logic of her leader, let me say. I have to say that some of what has been put forward is an insult to our intelligence.

The well-crafted defence depends upon the claim that this leaflet was to inform petition signatories—3,000 of same. If you wanted to really connect with those people, you will find that people do put their names and addresses on petitions and it might have been worth your while writing to them, a much more efficient and effective way to contact them. I have had a little look at this leaflet and I cannot find the words "Dear petition signatory" or "this is to give feedback to petition signatories". It starts off by attacking the ACT government: "The ACT Government seems determined to stop…" and so on. That is the case.

What we have here, according to the logic put forward, is that Mrs Dunne can effectively make a mistake, determine the gravity of that mistake herself, decide whether there should be a sanction or not, apply that, and that should be the end of the day. I do not think anybody in this Assembly has uttered more words of piety and indignation than Mrs Dunne about the so-called or maybe perceived transgressions of others. I really do consider that this is quite clearly a breach of privilege and once that is established—

Mrs Dunne: Point of order, Mr Speaker: the Treasurer cannot give his opinion on whether or not this is a breach of privilege because that is a matter for the committee.

MR QUINLAN: I have given my opinion. In as much as you can say it is not, I can say it is, and I do.

MR SPEAKER: Members should not pre-empt the work of the committee.

MR QUINLAN: No, and let me make it clear that this is my opinion. If that precludes me from sitting on the committee, I am devastated, let me tell you. Once we have gotten to the point—and I think it has been universally agreed that there has been a misuse of a role—then quite obviously the matter does fall to the Assembly and not to individuals themselves or to their parties. I think that it then behoves the committee to determine the final outcome and to determine whether there was intent on the part of Mrs Dunne to curry favour with the electorate or to induce bias.

You do not mind people currying favour with the electorate as long as they do not use their positions to do so, or attempt to bias the final outcome by attracting a wave of particularly opinionated submissions to the committee. I think we should just let nature take its course from here.

MRS CROSS (11.19): I wanted to echo and support the sentiments of my fellow crossbench members. More often than not, I am aware that the views that come from the crossbench are those that serve the community first and parties second.

My personal opinion is that there appears to have been an interference in the committee process, as shown by the information on this leaflet. In fact, when I first saw it, the comment that I made to the person who showed it to me was that I did not believe that Mrs Dunne was the author of it, because I did not think she could have been that stupid. I made that clear to her as well. I was quite shocked that she was the author of it, because she had worked here for a number of years as a staffer, and she was far more aware of and familiar with the committee process and the machinations of the Assembly than some of us, the new members, who from time to time may have stumbled over some things. This was somebody who had extensive experience in this place.

It did cause the committee a lot of anxiety. It wasted a lot of our time when we could have been spending it on other committee matters. Mrs Dunne did say earlier that there are three very strong members in this committee—as she is herself, the fourth member—and that what she did really would not have an effect on our opinion. Our opinion in this instance is not the greatest issue now. The issue is the fact that this action has compromised a potential committee inquiry. Irrespective of how objective we are in approaching this inquiry, we will be accused of either not doing it right or being biased. This leaflet has now gone out there and compromised the committee process. That is the concern that I have.

I think Ms Tucker's comments were absolutely right: maybe it was just a lapse of judgment. No-one can determine the intent, except for a committee, and even then it is awkward. We have had a number of committees in this place, including privileges committees, where we have used the honour system. We hope that the honour system will work. We hope that the information that members of those committees have does not go outside the committee process and into the party system, where perhaps party members may be privy to information that would influence their decisions. We have to rely on the system, but I felt that there was an abuse of the position. That was just my personal view.

I think Ms Tucker was right in saying that the process does allow our views to be challenged. That is the purpose of the privileges committee, and the purpose of us

discussing it and debating it in here today. Let's not use the red herring of saying we have four strong committee members and that the actions should not and would not influence the decision of the committee. If Mrs Dunne finds that having to wear all the different hats is difficult, as she said, then perhaps she needs to review the wearing of all those hats and how she conducts herself.

She also said that her motivation for standing down was to remove all bias. Well, that is only for Mrs Dunne to know, but the problem is already out there. If it was contained within this place, among the committee, it could have been resolved by the committee, but it was not contained in this place. To use draft variation 200 as an example of other members having personal opinions on such matters is pathetic. No member of this committee, when assessing and working on draft variation 200, put together a premeditated pamphlet to send out to influence the community.

Mrs Dunne: Point of order, Mr Speaker: I think that Mrs Cross is now again straying into the business of the committee if it is established. Expressing a view about my defence as pathetic or otherwise is really a matter for the committee and not for the members in this place at this time.

MR SPEAKER: The Assembly is hearing a debate about whether this ought to go to a committee or not. It is a fine point whether members stray into the area of the committee's work or not. I would ask members not to deliberately stray into areas that will be the realm of the committee, and to direct their attention to the motion which is before the Assembly.

MRS CROSS: Thank you, Mr Speaker. I am responding to some of the comments made by Mrs Dunne.

Once again, I stress that the integrity of the committee has been compromised. There appears to have been a clear interference in the committee process. I believe that, although we already have a substantial workload, especially the crossbench in this place, a privileges committee is warranted at this time.

MR HARGREAVES (11.25), in reply: In order to refresh members' memories, I will place on the record yet again the inquiry's terms of reference which I believe were compromised almost to the point of being aborted. They state:

> The Legislative Assembly for the Australian Capital Territory on 21 October 2003, agreed that an inquiry be undertaken into a proposal for a new supermarket to be built next to the Belconnen Fresh Food Markets in Lathlain Street Belconnen. 1,661 residents had submitted a petition to the Assembly requesting that legislation be passed to allow the building of the supermarket.

An examination of the flyer that was produced by a privileges committee will show that there has been a clear breach of those terms of reference.

I will address a couple of the points that were raised earlier by Mr Smyth. He said that Mrs Dunne prepared a flyer when she was approached by the community to do so. Mrs Dunne said that she and others had concocted that idea in her office the day before the flyer was prepared. Those two statements are contradictory. I believe the statement

that was made by Mrs Dunne. She was honest when she told the committee about the circumstances behind the production of the flyer.

Mr Smyth criticised my reference to an overlap when I was actually referring to an overlay. I referred to two issues—to the inquiry and to the parliamentary process, which I believe has been aggrieved. That was my reason for moving this motion. All members of this Assembly would have experienced difficulties as a result of wearing three hats. We were elected to this place because people believed we had the ability to represent them. We have all experienced problems in the performance of our role. If some members are experiencing difficulties perhaps, as Mrs Cross said earlier, they should review their roles.

I offer sympathy to any members of the shadow ministry who have to sit on committees that deal with issues relating to their portfolios. Ms Tucker referred earlier to stepping over the line. Many of us have accidentally gone close to that line, but we have stepped back. However, some of us have made mistakes. As Ms Tucker said earlier, in this case someone has stepped over that line. Mr Smyth made much of my reference to members' intentions. Mrs Dunne, in her defence, referred to her intentions. I direct members to page 706 of *House of Representatives Practice*, which states:

> …any act or omission which obstructs or impedes…any Member or officer—

in this case we are talking about committees—

> in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results…

The document then states:

> Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions…

People's intentions are not particularly relevant other than to highlight the serious nature of this issue. I have referred to the facts of this matter, but we need also to take into account its timing. On 21 October 2003 the Assembly resolved that an inquiry should be conducted and that inquiry had 12 December as its closing date. The flyer was issued in late November. If it had been issued prior to 21 October, we would not be talking about this matter today. However, it was issued right in the middle of the committee's inquiry. The flyer exhorts people to achieve certain results of which Mrs Dunne admitted she has been a champion for some time. Just as an aside, Mrs Dunne said that 3,000 petitions had been presented in relation to this matter. I do not know where 1,400 of those 3,000 petitions are as only 1,661 have been received.

Mrs Dunne: They were tabled previously.

MR HARGREAVES: Mrs Dunne said by way of interjection that those additional 1,400 petitions were tabled previously, which I accept. Mr Quinlan made a valid point when he contributed earlier to debate. People who are champions of such issues can be asked to submit their views. However, it is unacceptable for the chair of a committee to submit in writing a view that coincides with her own. Mrs Dunne said that this flyer was issued in

an attempt to inform members of the community in some small way about the inquiry. I hardly think that exhorting people to help establish Aldi at the markets is informing somebody in a small way.

It is quite wrong for the chair of any committee to state publicly and in writing, "I am your champion. I will effect certain results, but you have to help me." It is unacceptable for the chair of any committee to do so. Withdrawing from this inquiry might contribute to redressing the perception of bias. Letters were addressed to people who made submissions to this inquiry. Those letters, which were signed by all committee members, redressed that perception of bias. The media statement that was issued along the same lines also redressed that perception of bias. If anything, Mrs Dunne's withdrawal from this inquiry will enhance that perception of bias.

Mrs Dunne said that the three other committee members were unlikely to be cowed by that. She is dead right: the three other committee members will not be cowed by anybody. However, members of the community do not know that. It is wrong to distribute a flyer that infers that the chair of a committee—a senior position—can effect a certain result because of his or her seniority or position.

I refer now to what Mrs Dunne said when she offered to withdraw from the inquiry. She said, "If there is a perception of bias and, judging from the reaction of three other members on this committee, it appears as though there is, I will withdraw from the inquiry." Mrs Dunne did not state, "I acknowledge that there is a perception of bias." I am not convinced that Mrs Dunne believed there was a perception of bias.

Mr Smyth: That is your problem.

MR HARGREAVES: Mr Smyth is wrong when he says that this government has a problem. We have problems in two areas: this Assembly has a problem and Mr Smyth has a problem because of the actions of one of his colleagues in the shadow ministry. Mr Smyth has a problem; I do not have a problem. *(Extension of time granted.)* What is Mrs Dunne's perception of events? I believe it has now dawned on Mrs Dunne that there are two parts to this issue. The first is this inquiry, which we hope will be fixed, and the second is the contempt of this Assembly. It would be a good move on the part of Mrs Dunne to admit that.

I will conclude by referring to a comment made earlier by the Deputy Chief Minister. For the benefit of those who are likely to become members of the Select Committee on Privileges—

Mrs Dunne: Point of order, Mr Speaker: the member is out of order as he is attempting to influence those members who might be appointed to the committee.

MR SPEAKER: That is a fine point of order, Mrs Dunne. As I said earlier, it is a little hard not to stray across the line and to discuss issues that committee members might well discuss. I have asked members to try not to pre-empt the committee's work. I make the same request of Mr Hargreaves.

MR HARGREAVES: Thank you, Mr Speaker. The Deputy Chief Minister said that Mrs Dunne has determined the gravity of the breaches that have occurred and she has

determined the appropriate sanction or response to those breaches. In other words, she established that she had done the wrong thing, that there had been a serious breach and that her withdrawal from the committee would be an acceptable response. It is not. That is something that has to be determined by this Assembly. The appropriate process has to be followed. The Select Committee on Privileges must be asked to consider this issue.

I reiterate what I said earlier. It is not absolutely necessary for that committee to consider what sanctions should be applied. However, it can do so if it wants to. It should determine whether, in accordance with *House of Representatives Practice* and in accordance with standing orders, there has been a contempt of this Assembly. I ask that committee to consider two issues: first, the viability of the inquiry, which I believe has been addressed, and, second, the integrity of this Assembly, which I think has been breached. I commend the motion to the Assembly.

Question put:

> That **Mr Hargreaves's** motion be agreed to.

The Assembly divided—

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

Question so resolved in the affirmative.

Child protection
Ministerial statement

MS GALLAGHER (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations): I ask for leave of the Assembly to make a ministerial statement concerning child protection in the ACT.

Leave granted.

MS GALLAGHER: The care and protection of children in our community is a priority for this government. When it becomes impossible for the immediate family to support and care for children for various reasons, it becomes the role of the state to provide the care and protection that the entire community expects as a right for all children, regardless of who has parental responsibility.

All Assembly members are aware that these children—the most vulnerable in our community—are deserving of extra care and attention. I think we all believe that the state is in some way an inadequate replacement for loving and caring families. It is increasingly apparent that bureaucratic procedure does not, on occasion, provide the level of support or representation that young people need when in state care. It is clear

that the provision of government care for children right across Australia is fraught with challenges. It is clear that child protection systems nationally are under stress.

In this territory, it is clear that the Department of Education, Youth and Family Services has failed to comply with a key part of its legislative brief. Essential sections of the Children and Young People Act 1999 have not been complied with. It is now apparent, through this government's inquiry, that this failure to comply stretches from the enactment of the act in early 2000 under the previous government to my current term as minister responsible for this portfolio. It is clear, particularly in regard to issues of reporting and accountability, that the Department of Education, Youth and Family Services has failed to comply with the will of the Assembly in adhering to clear legislative provisions that aim to ensure our system of child protection is efficient and responsive to the needs of children at risk.

On 11 December the chief executive of the department informed me that the department had failed to meet its statutory obligations. In a short brief that was provided to me on that day the department outlined its failure, under section 162 (2) of the Children and Young People Act, to provide the Office of the Community Advocate with copies of reports regarding allegations of abuse of children in the care of the department made under that act. That admission of non-compliance on the part of the department prompted immediate action on my part.

In a letter to the Chief Minister that same day I alerted him to the failure by the department, my immediate concerns for the safety of children in the care of the territory and the need for immediate steps to be taken to guarantee the safety of the children concerned and to ensure that legislative compliance was guaranteed. At that stage I also sought further information from the Department of Education, Youth and Family Services. I sought a status report on children in the care of the chief executive and further information about the allegations of abuse in care reports.

The subsequent advice that was provided to me on 12 January 2004 resulted in the government's four-point plan that was announced on 15 January. That plan was directed towards ensuring that the interests of children in the care of the territory were properly protected. As part of the four-point plan, an audit team of senior child protection workers was established to investigate immediately the safety status of all children in care. That was complemented by an injection of $1.8 million into the area to provide additional resources to meet the day-to-day demands of ensuring child safety and to meet the increased costs associated with increases in substitute care demands.

The government also restructured the administrative functions of Family Services to separate child protection from disaster recovery and family support within the department. That was done to ensure a greater organisational focus on child protection. The government also instigated an independent review into the child protection system—a review headed by Commissioner Cheryl Vardon. Ms Vardon is being assisted by two specialists in the field of child safety, Professor Kim Oates of Westmead Children's Hospital and Ms Gwenn Murray, who assisted the inquiry in Queensland.

The government has every confidence that that review will act with full independence and probity in investigating all the issues associated with the role of the government in child protection and especially in the area of legislative compliance. The Children and

Young People Act, a prescriptive piece of legislation, clearly establishes the duties and obligations of those under the act for the safety and care of children. It places a heavy onus on the chief executive of the Department of Education, Youth and Family Services to ensure that action is taken in relation to a number of child safety issues.

It places that responsibility on the highest departmental officer because this Assembly reflected community concerns accurately. It expressed the view that the best means for protecting children and young people was to delegate responsibility in a number of key areas to the highest echelons of the ACT public service. The chief executive has a responsibility to conform to those legislative requirements but he or she is also given the task of ensuring that stakeholder and other state institutions such as the Children's Court are given an accurate picture of cases in action. An essential part of the legislation is to ensure that all those involved in child protection perform their essential functions and are better informed and directed.

Under the legislation the Office of the Community Advocate is given a special place—that of advocate and overseer. It is there to provide children with an independent advocate and also to ensure that the department is accurately addressing the needs of children through its reporting, appraisal and assistance programs. The act is constructed in such a way as to place a clear role on the OCA as watchdog over the department. Under section 162 (2) of the act, the chief executive of the department is required to report any allegations of abuse made in relation to children in the care of the territory.

It has now become clear that the Department of Education, Youth and Family Services has not adhered to the word or the spirit of the act in this matter. The Community Advocate states that the OCA has not been supplied with reports pursuant to section 162 (2) of the act since its enactment in 2000. It is also now clear that the OCA raised issues with the department in correspondence and in annual reports in the time of the previous government. Until now no government has systematically responded to those issues.

It is the intention of this government to address the failures of the department in this area through a thorough review of the operation of the child protection system. Any necessary reforms will occur with the full benefit of Ms Vardon's report, which is due to be handed down to the government on 16 April. On reflection, I believe I should have picked up on the issue of non-compliance under section 162 (2) of the act earlier than I did—an issue of considerable regret to me personally and professionally. I do not walk away from my responsibility as the relevant minister. However, I want to impress on members that there can be no greater responsibility than ensuring the safety and wellbeing of our children. I take that responsibility seriously.

I am disappointed in the performance of my department in this matter but I am also disappointed that this issue took so long to come to my attention. It is of no comfort that the issue of non-compliance predates my time as minister and predates the term of this government. I read the entire committee report within days of its being tabled in the Assembly. I acknowledge that I did not immediately pick up on the claim in the report relating to non-compliance with section 162 (2) of the act. My main focus in considering the committee's report at the time was to evaluate and form a view on the recommendations to the government.

There was no recommendation in relation to non-compliance under section 162 (2). The only recommendation in that area related to the inclusion of the requirements of meeting statutory obligations within performance contracts of executives within the department. The government noted that recommendation because the issue falls within the public sector portfolio and relates directly to the matter of performance contracts for senior staff. In hindsight, I should have picked up on that issue earlier, as should have staff within my office. That is an area in which I should have done better.

However, I have never walked away from my ministerial responsibility. The minute I was directly informed of this breach by the department I put in place measures to rectify the situation. I have treated my responsibilities with the utmost importance. I have put in place a plan not only to fix systemic failures but also to map out a plan for the future. That is my job. I assure all members that I take it seriously.

The government's continuing response to this issue leads me to another related matter. On 11 December, before I was informed directly by the department of its failure to comply with the legislation, I also tabled the government's response to the Standing Committee on Community Services and Social Equity. Once this new information was brought to my attention, it was immediately apparent that the government's response did not, and could not, address all the serious issues contained in the committee's report and that the government's response had to be revised. The failure of essential parts of the administrative structure to address the needs of these children at risk was not addressed in the government's response as well as it should have been.

The government will be reviewing its response in light of recent developments and in light of the continuing independent review that is being headed by Commissioner Vardon. That will result in a supplementary response to the report of the committee being tabled at the earliest opportunity. This government will continue to act on issues as they come to light, but it will also ensure that its commitment to the care and protection of children and young people is accurately reflected on the public record. I take committee reports seriously. I apologise to members of the Standing Committee on Community Services and Social Equity for having to provide a supplementary response.

I turn now to the decisions that the government made last Friday with regard to the chief executive and the executive director, family services, of the Department of Education, Youth and Family Services. On Friday, 6 February 2004, Commissioner Vardon provided the Chief Minister and me with correspondence pertaining to initial concerns arising from her inquiries. For the information of members, I will table the commissioner's correspondence and an attachment from Ms Gwenn Murray. I present the following paper:

> Children and Young People Act—Copy of letter to Ms Gallagher from Cheryl Vardon, Commissioner for Public Administration—Review of the Safety of Children in Care in the ACT and of Child Protection Management, dated 6 February 2004.

I point out at this stage that the Community Advocate has some concerns about the tabling of this information, as the attachment from Ms Gwenn Murray relies on some of the Community Advocate's initial findings. The Community Advocate was concerned

because these are early analyses of the files and she did not want them to be taken out of context.

I urge members to be cautious with the information that is contained in these documents, in particular, the attachment from Ms Gwenn Murray. Whilst the commissioner has made no findings at this stage, she felt that there were issues arising from her investigations that required her to raise them with government as a matter of urgency. Ms Vardon reported to the Chief Minister and to me as a result of her initial inquiry in the following terms:

> In the ACT we have a group of children for whom safety is not assured, and that this is directly as a result of the Department of Education, Youth and Family Services not meeting statutory requirement.

Ms Vardon identified a small group of children who may not have been provided with sufficient care and protection in the past—a matter of serious concern to the government. Consequently, this government took the decision to ask the chief executive and executive director to stand aside pending the commissioner's final report and to ask Mr Tim Keady to act as head of the department. The government is providing additional resources, including a team of senior officers, to assist in the administration of Family Services. On Friday, I sought additional staffing and resources from our interstate colleagues to assist the work of the commissioner and to allow the territory's child protection workers to concentrate on the day-to-day demands of their work.

The government believes that these measures will place the department in a better position to deal with the care and protection of children and young people, to deal with the increases in the number of reports being received and begin the task of restoring confidence in our child protection system. As a result of Ms Vardon's correspondence, I also sought immediate advice from the Community Advocate about the six children referred to in the attachment to the commissioner's letter. She assured me that she did not have any immediate concerns for the safety of the children who had been identified, although she indicated that she would investigate the files associated with those children at the earliest opportunity. I understand that that occurred yesterday.

The OCA has also guaranteed that it will raise with me directly any issues requiring immediate action. This is the government's response. We will continue to respond to any additional issues if or when they arise. I make the point that this territory is not alone in dealing with issues concerning child protection. National figures demonstrate that the number of child protection notifications in Australia increased from 107,134 in 1999-2000 to 198,355 in 2002-03. In the space of three years that represents an enormous growth in the number of cases and complex issues with which government departments and their staff are dealing.

The ACT is no exception. The recently tabled quarterly report certainly indicates the increases that the ACT is experiencing. These terrible increases have seen repercussions in the way that government agencies respond to the problem. In Queensland, New South Wales and South Australia this issue has arisen and it has been dealt with. In Queensland the administration of its act has raised questions concerning mandatory reporting, the relationship between government and non-government agencies, and staff training and retention.

In the recently completed review of child protection in South Australia, Robyn Layton QC made recommendations on policy for referral of notification and report systems, mandatory reporting, and the framework and structural issues to improve service delivery. The issues in the ACT have similarities with both those processes and reports. We will be looking to the experience in other jurisdictions, learning from their mistakes and ours and building a better child protection system in the ACT. We will work relentlessly to protect the welfare and safety of our children and young people in the care of the territory and in the community.

I would also like to make a comment about the work of the individual child protection workers in Family Services. The issues with which those frontline staff deal are beyond the experience of many in this chamber. Dealing with abuse and neglect of children in our community places enormous strain on individuals. It must also be said that few in our society put their hands up to work in this field. Right across Australia child protection departments are dealing with staff shortages and issues concerning retention of staff. This government places high value on the work of these professionals. Calls for their sacking should be dismissed out of hand. Whatever the failings of the system and the administration of the act by the department, frontline staff of Family Services perform their task in difficult circumstances.

The department is constantly looking to improve the training of child protection staff through the implementation of the Re-Focus program. We are also continuously looking for committed people to join the Department of Education, Youth and Family Services. That includes advertising nationally and internationally as well as considering changes to the qualifications that are required by persons who are applying for positions in this area. The child protection work force provides an essential role in reforming the system of child protection in the territory. The government values its continuing commitment to securing the safety of children in the ACT.

The recent public interest in our child protection system has also impacted significantly on our local foster carers. I acknowledge the excellent work of ACT foster carers. They are an invaluable source of energy and support to child protection agencies and children in need of their care. In recent weeks I have had several meetings with the Foster Care Association and I know that it is concerned about some perceptions of its role. There is a national shortage of foster carers and we need to deal with these issues carefully. We have the best foster carers in the country—a dedicated team of volunteers who give so much to protect our most vulnerable, often with little recognition.

I take this opportunity to acknowledge their efforts and I thank them on behalf of the government. It is my sincere hope that the public interest in the child protection system does not impact negatively on the foster care system in the ACT. This government is committed to providing the best child protection system we can. There is no doubt that there is need for improvement. At every stage this government and I, as the minister, have been honest with this Assembly and the community. We have not hidden any information or attempted to diminish the seriousness of the issues that have been presented to us.

We will continue to be honest and open throughout this process. I look forward to working with Assembly members on this issue. I am the minister who is taking

responsibility and I am mapping solutions and a way forward. Whilst in the short term that might lead to some significant challenges and difficulties, the long-term protection of our children requires that action.

MS TUCKER (11.59): I seek leave to speak.

Leave granted.

MS TUCKER: It is important that we have an opportunity to respond to the minister's statement on an issue that is obviously of great importance in the ACT. The committee report that was tabled contains a lot of important information and recommendations. The section entitled "Where to from here?—Monitoring improvements" contains the following statement:

> While the committee is not recommending, at this stage, an inquiry into ACT Family Services or an inquiry solely on care and protection, it does believe it is necessary for the Government to report back to the community on the implementation of the Committee's recommendations, as well as progress on Family Services' Re-Focus agenda within a set period of time.
>
> 1. The Committee expects the Government to respond to this report in the November 2003 sitting period. Having reviewed the Government's response, the Committee intends to seek regular updates, to the Assembly, on the implementation of the recommendations.

I was interested in the information that is contained in that section. I refer to this issue today because the committee report raises extremely significant issues for this Assembly and the ACT community. The government's initial response was appalling—a point that I made immediately after it was delivered. I asked Ms Gallagher to go back and do it again. Since then Ms Gallagher, belatedly, has taken responsibility for much of what has been pointed out in this committee report, even though there were not particularly strong recommendations on some of the issues that are now receiving such a lot of attention and that have been met with alarm.

I commend the minister for responding to this crisis. It is not a new crisis; it has been around since I have been a member of this Assembly. In 1997, when I was chair of the social policy committee, I conducted an inquiry into the provision of services for children at risk in the ACT. I would like to take members through some of the recommendations in the report of that inquiry. The 2003 committee report made recommendations in relation to a number of issues; for example, the lack of effective and coordinated service provision for young people with intensive support needs. The 1997 committee report recommended the provision of services for young people with extraordinarily high needs.

The 1997 committee report referred to the turnover in caseworkers. We wanted to include a performance indicator to address that activity. The 2003 committee report referred to staffing and to a continuity of caseworkers—which is a good issue. It is common for a child to have five caseworkers over a two-year period. The OCA referred to a memorandum of understanding with Family Services and Quamby regarding weekly contact with clients in Quamby. The committee report states reasonably casually that that

contact is not being maintained but it does not make a recommendation because of the Re-Focus program.

When we look through this report we become aware that the Re-Focus program was given a lot of credibility by the committee. I am not criticising the committee for that; I am just making the point that many of these serious issues were not raised strongly by the committee as it was convinced that the Re-Focus program was working. The Community Advocate states in this report that she is encouraged by the new director. She also states that improvements are occurring.

The report of the 2003 committee referred to record management and failing to keep accurate and coordinated records within and across agencies. The report of the 1997 committee referred in recommendation 26 to interagency case management and to the provision of guidelines. The 2003 committee report made certain recommendations about the 93 children who had been evicted from ACT Housing properties. The 1997 committee report referred to accommodation in recommendations 13 to 19. The committee recommended that the ACT government should commission a study to determine how to prevent children from being evicted.

After examining the terms of reference that were established for Ms Vardon, I established that the fourth term of reference refers to "any other matter relating to child protection in the ACT". The first three terms of reference focus particularly on the department's failure to fulfil its statutory obligations under section 162 of the Children and Young People Act 1999. I want to focus on the fourth point of reference—"any other matter relating to child protection in the ACT". The department has not met its statutory obligations, which is a serious issue, but that has not happened across-the-board for many years, which is an even more serious issue.

Under Bill Stefaniak, we faced the same issues. It is easy to politicise this issue. I see this crisis as an opportunity to do some real work in this area. However, that will mean the expenditure of more money. We will require additional resources for the provision of management systems, filing systems and a change in public service culture. This issue does not involve only the Department of Education, Youth and Family Services; it also involves the law. Page 88 of the committee report states:

> In November 2002, the Children's Magistrate stated:
>
> > If I am correct in my opinion about the correct interpretation of paragraph 156 (1) (a) of the Act, the consequence is that the Children's Court has less power to protect children from a real risk of harm than the Family Court. I commend this point to the attention of the Legislative Assembly.
>
> The Committee was gravely concerned by the above comments made by the Children's Magistrate.The issue the Magistrate was referring to is the standard of proof required under the Children and Young People Act 1999 to make orders for the care and protection of a child. At question is the application of the "Briginshaw principles"—principles derived from a 1938 High Court case dealing with whether the standard of proof of adultery for a divorce was the criminal standard (beyond reasonable doubt) or the civil standard (balance of probabilities).
>
> > There is an apparent tension between the application of the Briginshaw principles to proof of serious allegations of abuse or neglect of children and the

> application of the best interests principle. It is never in the best interests of a child to be placed at real risk of loss of life or the infliction of serious harm and yet it would be precisely in those cases that the court would be obliged to be most circumspect about making a finding.

The Committee also notes the views of the Community Advocate who stated that a focus on "evidence gathering" is very different from a focus on asking "is the child safe?"

> …a concern about whether something is going to hold up in court can act as a fatal distraction to child protection decision making.

Many members have been aware of these issues for a long time. Once again, these issues require equal attention in this inquiry. I hope I have made the point that this is not just about children in care: this is about children in their own homes and it involves the whole system. The 1997 committee report stressed the need to look at prevention and intervention. We are focusing on the sharp end but we need to do that. Governments, when responding to any of these social issues, tend to focus on the sharp end because that is where it gets really messy and that is where people get caught.

The early intervention and prevention issues must be given equal focus. When the minister initially responded to these issues she said that she wanted to separate the crisis response from the prevention issues and the less serious allegations. I commend her for that. I hope that this inquiry will examine related matters. I also hope that it will be a broad inquiry. The government's response and the minister's response to the next committee's report should restore our trust. The Canberra community wants to be assured that this issue will be dealt with.

Mr Smyth: Will the minister move that her statement be noted so that Assembly members are afforded an opportunity to discuss it later? Ministerial speeches and statements are normally circulated so that members can follow the speeches and re-read them later. As we have not been afforded that opportunity, I ask the minister to table her speech. Members will then be able to obtain a copy of that speech, re-read it and obtain a full understanding of what the government is doing.

MR SPEAKER: I ask the minister to table her speech and thereupon to move that the document be noted.

MS GALLAGHER (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations): I am happy to table my speech, which contains additions and handwritten notes. I present the following paper:

> Child Protection in the ACT—Ministerial statement, 10 February 2004.

I move:

> That the Assembly takes note of the paper.

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

Standing committees—reports on annual and financial reports
Alteration to reporting dates

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

> That the resolution of the Assembly of 25 September 2003, concerning the reports of the Standing Committees into the Annual and Financial reports for 2002-2003 be amended by omitting "by the first sitting day in 2004" and inserting a new paragraph:
>
> (2A) If the Assembly is not sitting when the Standing Committees have completed their consideration of the Annual and Financial Reports for 2002-2003, the Committees may send their reports to the Speaker, or in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for their printing, circulation and publication.

Education—Standing Committee
Report 4

MS MacDONALD (12.12): I present the following report:

> Education—Standing Committee—Report 4—*2002-2003 Annual and Financial Report: Department of Education, Youth and Family Services—2002 Annual Report: Canberra Institute of Technology*, dated February 2004, together with a copy of the extracts of the relevant minutes of proceedings

I seek leave to move a motion authorising the report for publication.

Leave granted.

MS MacDONALD: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

MS MacDONALD: I move:

> That the report be noted.

I do not wish to speak at length in regard to this to report, but I would like to outline it for the benefit of Assembly members. The Standing Committee on Education had the following annual and financial reports referred to it: the 2002-03 report of the Department of Education, Youth and Family Services, the 2002 report of the Canberra Institute of Technology and the 2002-03 annual report of the Building and Construction Industry and Training Fund Board.

The committee inquired into the DEYFS and CIT annual reports but it had no comment to make about the report of the Building and Construction Industry Training Fund Board. The report makes seven recommendations in relation to the DEYFS and CIT annual and

financial reports. On 4 November 2003 the committee heard from the Minister for Education and officials within the Department of Education, Youth and Family Services. The committee examined the CIT annual report on 3 June following its tabling in March. The reason for that is that the CIT annual report operates on a calendar year rather than a financial year.

The first three recommendations are to do with the layout of the DEYFS annual report and compliance with the Chief Minister's annual reports directions. While the DEYFS report was generally well laid out and mostly easy to read, the committee was concerned that it received only photocopies of the report, which made it difficult to read some sections. There were also concerns about the overall consistency and accessibility of the report. The fourth recommendation relates to external scrutiny and the importance of providing a full picture of occurrences within a department. As such, the committee is highly critical that the 2002-03 annual report provides no information in regard to the impact on the department of the two coronial inquests that occurred during the 2002-03 reporting period.

The last three recommendations relate to the CIT 2002 annual report. Recommendation 5 recommends that the CIT undertake annual destination surveys of former students to ascertain the educational and vocational outcomes of students who have successfully completed their course. The committee believes that this would be useful both as a performance measure and as a promotional measure. Recommendation 6 relates to the provision of more detailed information on individual faculties. The final recommendation—recommendation 7—relates to visa requirements for overseas students.

The committee was concerned to hear that overseas students have more rigid requirements if studying a VET course than they do if studying at university. The committee believed that that had the effect of causing an uneven playing field. Finally, I thank the minister, departmental officials and CIT officials for making themselves available to the committee. I also thank the secretaries—Mr David Skinner and Ms Kerry McGlinn—who worked on this report for several months. I commend the report to the Assembly.

Question resolved in the affirmative.

Public Accounts—Standing Committee
Report 7

MR SMYTH (Leader of the Opposition) (12.17): Mr Speaker, I present the following report:

> Public Accounts—Standing Committee—Report 7—*2002-2003 Annual and Financial Reports of the Chief Minister's Department, Department of Treasury, other related agencies and the ACT Legislative Assembly Secretariat*, dated February 2004, together with a copy of the extracts of the relevant minutes of proceedings.

I seek leave to move a motion authorising the report for publication.

Leave granted.

MR SMYTH: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

MR SMYTH: I move:

> That the report be noted.

The annual reports process is always interesting. I thank committee members for their approach to the process and for the positive way in which they viewed the annual reports and determined what they wanted to achieve in this report. As can be seen in recommendations 1 to 4, we wanted to make these reports more useful and accessible. We wanted to get rid of some of the promotional, glossy pictures and material that have invaded annual reports of all jurisdictions over the past few years. We have asked departments and agencies to comply with the Chief Minister's annual reports directions in regard to the use of graphics and promotional information.

Whilst that information is useful, that is not what annual reports are about. The deficiencies that have been noted in this place for many years—to her credit, Ms Tucker has always been an advocate of these issues—are covered by recommendations 3 and 4. Some useful information is also contained in the report, in particular lists of the people on advisory boards and committees, their length of service and when their membership is due to expire. That gives us a better picture of the people on those boards, how long they have been there, what they offer and when those boards might change.

Given the earlier ministerial statement, in recommendation 4 the committee recommended that a list of all government inquiries or reviews relevant to the portfolio or the annual report and their status be included in the appendix to annual reports. We need references to the body of the text so that we know what stage each inquiry or review has reached, how it is being dealt with, what recommendations have been made and how those recommendations have been followed up. Members have asked for that information to be included in a number of reports. It would be a good thing if it were included.

I am sure that other members will expand on recommendation 5. Some serious concern has been expressed about the government's commitment to the Office of Sustainability. Representatives from the Office of Sustainability said that they are not consulted on every cabinet submission. They then pick and choose which of the cabinet submissions they will respond to from the submissions that are referred to them—probably because of resourcing issues. Those members who are serious about sustainability would know that it concerns every area of every portfolio.

Clearly, the Office of Sustainability either does not have the resources or it does not have the independence to do that. Recommendation 5 states that the Office of Sustainability should be made independent of government and it should be resourced sufficiently to

enable it to operate across all agencies and departments and report back to the Assembly. Recommendation 6 refers to the future of Canberra airport, which is important to all Canberrans. The committee report asks the government to update members regularly in relation to that matter. Recommendation 7 refers to how we, as members and as legislators, go about our job.

On 31 December regulations for the banning of asbestos—and this was part of a national ban—should have come into force in the ACT. Unfortunately, on 16 December those regulations were not available to the committee, therefore, they were certainly not available to the Assembly. We are always confronted with issues about resources, pieces of legislation being passed and implementing them on time. However, in this case the timeframes did not enable scrutiny by the Assembly before the commencement of those regulations—an increasing trend. So regulations that are introduced could be disallowed almost six weeks later. That is not the way to implement law and achieve good outcomes.

Recommendation 7 refers to the role of the Assembly in creating good law and in ensuring that the interests of constituents are looked after. I urge the government to ensure that regulations are tabled in future in such a manner that we are able to do our jobs properly. I willingly acknowledge that that is a big ask and that that probably has not happened in the term of former governments, but it is something that we should be working towards. All members would be aware that local community councils sometimes get into difficulties. At the moment some councils seem to be going through a tough period.

Recommendation 8 states that, when the government is providing funding to such councils or committees, they should also be provided with appropriate internal complaint mechanisms. If necessary, the government should also provide conflict resolution support so that those valuable committees in our community can continue. We want to ensure that they deliver services for the community rather than get caught up in internal politics. I think that is fairly reasonable in those cases where money has been apportioned to them.

Recommendation 9 picks up on the status of women report that was tabled in the Assembly more than 12 months ago. One of the recommendations—a recommendation that was noted in the Chief Minister's annual reports directions—was that agencies and organisations should address a gender balance. As that has not happened the committee would like that to occur. Recommendation 10 is a minor issue. In about August the Treasurer tables in the Assembly a reconciliation for the Treasurer's Advance. We believe that that reconciliation should also be included in annual reports so that it is available for future reference. We do not want to have to go through a different set of documents to find core business items in the Treasurer's annual report. It would be nice to have that breakdown of expenditure available at all times.

Members would be aware that the Public Accounts Committee comprises three chairs who serve also as members of the committee. Some of those committee members established that the independence of commissions is often questioned. Recommendation 11 states that the government should review the Gambling and Racing Control Act to ensure the independence of the ACT Gambling and Racing Commission. On a number of

occasions the chief executive officer, who appeared before the committee without the chair, deferred to the minister.

If those commissions are independent and they have been established to perform a statutory function, the chair of the board should be telling the committee, the Assembly and people in the ACT what the commission does without referring any issues to the appropriate minister. Recommendation 12 states that, in future, when independent commissions appear before Assembly committees, both the chair and chief executive should be in attendance. It is quite appropriate for the chief executive to defer to the chair of his or her committee. However, we are not sure whether it is appropriate for the chief executive to defer to the minister. If we, as a Legislative Assembly, have given an independent commission a role or a function and we have made that commission independent of and responsible to government and to the Assembly, it is curious that chief executives who appear on their own often defer to the government of the day.

Recommendation 13, which is somewhat topical, recommends the establishment of a water authority—an important issue if we are to manage our water resources. I suspect that that authority will be responsible not just for the ACT but also for the south-eastern region as our catchments do not stop at the border. We require some sort of water authority to manage water resources in the ACT and the region. ActewAGL is charged with delivering those resources, but should it also be seen as a watchdog, or should there be some separation of powers?

Recommendation 14 refers to the qualified audits that ActewAGL again received from the Auditor-General this year. I am sure all members appreciate that this is an argument about standards, but I think we need to work with the Auditor-General to resolve these issues. I am sure that the Treasurer, in the process of doing that, will respect the role of ActewAGL directors. They have to account to other parts of the law and they should not give away their responsibilities. We must ensure that we work to some sort of resolution so that ActewAGL does not get the hat trick in relation to this year's annual reports.

I congratulate the Assembly secretariat on the work that it has done in the operation of this building. I call on the secretariat to continue that good work and to be a leading example of best practice in a publicly funded and operated building. It has achieved energy efficiency as well as instigating programs for continuous improvement. We talk about these issues, pass laws about them, campaign about them and conduct committee inquiries. This Assembly could be seen as an example for the people of the ACT. The plaques on the walls of this building show that we have won awards for its refurbishment. However, we must continually improve energy efficiency and set an example for the public and private sectors.

Recommendation 16 refers to the Stadiums Authority. I sound a warning note that the Stadiums Authority should follow appropriate processes in relation to its operation. We require clarification as to whether or not the Government Procurement Act applies to the Stadiums Authority. I ask the Treasurer to provide information in relation to that issue. The final recommendation in the committee's report refers to WorkCover and to the work that it does. The government said that it would provide Assembly members with an assessment of the level of need in WorkCover. I ask the government to broaden that assessment and to include an analysis of the effectiveness of the current education programs that are conducted by WorkCover, to establish what inspection programs are

carried out, and to determine how effective the infringement system has been in the last few years that it has been in operation.

Given that not one infringement notice has been issued or been successful, and given that there are some concerns about the effectiveness of the system, it might now be appropriate for the minister to report back on what is happening in WorkCover. We want to know how the government assesses the level of need in WorkCover. I assume that those statistics will be included in the minister's report. The committee was told that the government intends to make some amendments to the Occupational Health and Safety Act. We look forward to those amendments. Perhaps the difficulty lies in the fact that the regulations are not working. As the New South Wales system is fairly effective, perhaps it could be replicated in the ACT without too much difficulty. We will wait to see what the minister intends to do.

I thank all those who appeared before the committee. Ministers and their staff were most obliging and, in most cases, they were quick to respond to questions on notice. I thank committee members for the time and effort that they put into the report. Everyone has been very busy. As other members are also chairs of committees they prepared reports on their portfolios. I thank in particular the secretary of the committee for the sterling work that she did in preparing this report and delivering it on time to meet the needs of the Assembly.

Question resolved in the affirmative.

Sitting suspended from 12.31 to 2.30 pm.

Questions without notice

Williamsdale quarry

MR SMYTH: My question is to the Treasurer. Treasurer, in February 2002 Totalcare Industries Ltd announced that it intended to sell its share in the Williamsdale quarry joint venture. The business and the assets of the joint venture were sold by 30 June 2002 to a company called Pioneer Construction Materials.

Treasurer, how much did Totalcare receive for the sale of its interest in the Williamsdale joint venture and was the revenue from this sale appropriate for the value of the business at the time it was sold?

MR QUINLAN: I will have to take that on notice. I do not have the figures at hand. Let me say, if members are getting excited about some of the reports in the media, that the reports are not quite accurate. There is not much salacious to look forward to as a result of the recent reporting. However, I will get the figures on notice, thank you.

MR SMYTH: While the Treasurer is getting that detail, he might like to take this on notice as well: how many parties expressed interest in buying Totalcare's interest in the Williamsdale quarry joint venture and how many parties made firm offers to buy out Totalcare's interest.

MR QUINLAN: I will take that on notice as well.

Karralika facility

MS TUCKER: My question is to the Minister for Planning and concerns the availability of information about the proposed Karralika redevelopment. Given that the broader community was not included in any consultation for the redevelopment—you are proposing that there be no proper process allowed to deal with community concerns—can you table, by close of business today, any analysis or advice that led you to take this decision, including the construction proposal relating to the redevelopment of the Karralika alcohol and drug therapeutic community's business case from the department in 2001 and the social and environmental impact analysis that I presume you had commissioned before making the decision?

MR CORBELL: I do not think I heard all of Ms Tucker's question. What decision?

Ms Tucker: I did not say it in a question. But if you are asking for clarification, I am talking about the proposal to increase the number of beds at Karralika.

MR CORBELL: The decision to extend the facility at Karralika was made by government in the budget cabinet. It was announced in the middle of last year. It was based on an analysis and work done by ACT Health as to the most appropriate way to expand the provision of drug rehabilitation facilities in the ACT. Given the important role that ADFACT already played and the considerable level of investment that the territory has already made in supporting the activities of ADFACT, it was decided—on that basis—that this was the most appropriate course of action.

MS TUCKER: The question was that you table that information. I am asking whether you would do that. I would like to see that advice and analysis, including the social and environmental impact, tabled. Will you table it by close of business today.

MR CORBELL: As far as I am aware, there was no social and environmental impact advice that came before the government's budget decision. That would normally be done through the planning process, not as part of the capital works consideration by the government. Given that the proposal is consistent with the land use policy for the site, the issues we are talking about are more detailed issues around traffic, access and so on. This would normally be dealt with as part of the development application process.

In relation to the documentation to which Ms Tucker refers, I am happy to take the question on notice and find out exactly what the nature of those documents are. If they are able to be tabled in the Assembly, I will do so.

Karralika facility

MRS CROSS: My question is also directed to the Minister for Planning. The minister originally invoked regulation 12 of the Land (Planning and Environment) Regulation 1992 in regard to the Karralika drug rehabilitation centre refurbishment due to the sensitive nature of that facility. That line of action was taken and continued despite the fact that signs indicate where the Karralika facility is located, media releases from the minister's office refer to the facility and pictures of Karralika residents in the *Canberra Times* suggest that the facility does not require confidentiality and is not of a discreet

profile, as the minister claimed in his media release of 6 February. Why did the minister originally invoke regulation 12 of the Land (Planning and Environment) Regulation 1992 when it was apparent that Karralika was not a confidential facility?

MR CORBELL: Mrs Cross does not appear to have read the regulation. If she had she would be aware that the regulation does not refer to a confidential facility; rather it refers to the provision of confidential services. Clearly, confidential and sensitive services such as those provided at a drug rehabilitation facility would fall within the meaning of the act and the regulations. In the circumstances I still believe it was appropriate. Fadden and Macarthur residents know where the Karralika facility is located. They live in those suburbs, they drive up and down the street every day and they know where it is located. I have received many letters in my office but only a number of them have indicated that some residents in Fadden and Macarthur did not know what Karralika was and what services it provided. So it certainly was a discreet and low-profile service.

The government has put in place a process to respond to that level of concern in the community. We want to try to allay fears that Karralika is some sort of drug jail—which is the unfortunate language that has been used by some media proponents. Karralika is not a drug jail; it is a drug rehabilitation facility. People are not sent to that centre and forcibly confined to it. People who have detoxified and who are going into that facility are seeking to rebuild their lives and life skills. They are seeking to obtain the confidence that they need to once again become part of the community.

Karralika has been placed in a suburban setting in an attempt to enable people to adjust to a more regularised and consistent pattern of living in a suburban rather than an institutional context. We do not want such facility located in the middle of nowhere. It was important to establish a facility such as Karralika within a suburban setting. I believe that I have appropriately exercised regulation 12. As I indicated earlier, if Mrs Cross had read that regulation she would be aware that it refers to the provision of confidential services, not a confidential facility, per se.

MRS CROSS: I ask a supplementary question. The minister decided recently not to use regulation 12. Was that an admission that he incorrectly invoked that regulation in the first place? What is the minister's definition of the words "consultation" and "trees", given that his definition has confused residents of the Karralika action group?

MR CORBELL: I do not believe that the changed process is an admission on my part that the regulation has been exercised incorrectly. I worked with my Labor colleagues in Brindabella to find a sensible and rational, rather than a hysterical, way forward. Unfortunately that has been the approach of some members of the Assembly and others. I responded to a level of community concern that, in some respects, was based on misinformation. That needed to be addressed rationally. A comprehensive process is now in place. I am happy to fully outline that process for the benefit of Assembly members.

I refer to the member's reference to the words "trees" and "consultation". Following my meeting with the Karralika action group I saw the release and read the comments of that group in relation to this issue. Unfortunately, my comments were grossly misreported and misrepresented. This is the point that I wanted to make: the tree count on the site will vary, depending on what is classified as a tree. Members would be aware that the tree protection legislation defines what is a tree and what trees require approval before they

can be removed. Certain types of trees do not require approval before they are removed. That is the point that I made at the meeting I had with the action group.

I refer, next, to the definition of "consultation". Prior to my announcement on Friday there were no formal statutory consultation requirements because of the use of regulation 12. There was informal consultation with residents, but that was not a statutory requirement. Unfortunately, both those comments were grossly misrepresented on the website of the Karralika action group.

Ministerial responsibility

MR CORNWELL: My question is to the Minister for Education, Youth and Family Services. What is her understanding of the concept of individual ministerial responsibility under the Westminster system, as it applies to her as a minister?

Mr Hargreaves: On a point of order: we have a matter of public importance on the notice paper today dealing with that subject. Is this anticipating debate?

MR SPEAKER: No, it is not a debate. It is a discussion of a matter of public importance.

MS GALLAGHER: I think I touched on this matter this morning, but obviously Mr Cornwell was not listening. It was quite a lengthy speech, so I can understand that.

Mr Cornwell: I don't have a copy yet.

MS GALLAGHER: I have just handed it to the clerk, so Mr Cornwell should have a copy soon. Ministerial responsibility in relation to the matter at hand is when one takes full responsibility when provided with advice that requires ministerial action. That is what I have done every step of the way. I have outlined that process at length today. I have taken responsibility. I went public with this although I did not have to go public. It was very important that I did. I did it the minute I could. The minute I had information available I went public. I put in place steps to address the situation. We put in additional resources. We have a review in place. I am seeking staff from outside the territory. There are a number of things. I am not walking away from my responsibility by any means.

MR CORNWELL: I have a supplementary question. I thank the minister for that commitment and ask her: are these the standards of ministerial responsibility that she has espoused or as outlined by her Chief Minister?

MS GALLAGHER: I am not sure I understand the question. These are responsibilities that all ministers in this government abide by. It is about being honest, open and hard working and about doing the job properly. I am the only minister who has taken responsibility for this matter, which stretches back a number of years. All of us work this way, and we are happy to stand by those principles that I have just reflected on.

Karralika facility

MS MacDONALD: My question is to the Minister for Planning, who is also the Minister for Health. As has been discussed today, the issue of Karralika has been of

interest to a number of local residents and, as a result, I understand that last week you withdrew the planning application by Health to extend Karralika. Minister, can you explain to the Assembly the process that the proposed redevelopment of Karralika will now follow?

MR CORBELL: I thank Ms MacDonald for the question because it gives me an opportunity to clarify the process for the information of members. As I indicated in one of my earlier answers, the government, in consultation with Mr Hargreaves, Mr Wood and Ms MacDonald as the government members in Brindabella, has sought to address some of the misconceptions and, indeed, concerns that have been raised by residents in relation to the Karralika redevelopment. I want to put it on the table that the government believes that the process now in place is a very fair and open process that should address the range of issues raised by residents.

Let me put some fact on the table, first of all. The Karralika proposal expands the alcohol and drug rehabilitation facility from 20 to 60 beds. There has been some suggestion that there will be an additional seven beds. That is not correct. It will go from 20 to 60 beds. On top of that, the facility will accommodate a significant number of children, who will be the children of people going through rehabilitation. So the actual number of people who will be in there for rehabilitation will be lower than the total bed number.

I have instructed ACT Health to withdraw its development application, which was exempted under regulation 12 of the land act, in favour of a more standard development process. What will happen is that ACT Health will go through the standard preapplication stage with the ACT Planning and Land Authority. That will involve informal consultation with immediate residents on the proposed development application. It also includes the high quality sustainable design process and will also involve consultation with government agencies, such as Environment ACT and City Management. That occurred before. It will occur again through the standard preapplication process.

Once that is done, a new development application will be lodged and will be publicly advertised for the statutory period of 15 working days. Plans will be publicly available on the development application register both at ACTPLA and on the website. All plans lodged will be publicly available. Further to that, the application will be notified publicly by means of an advertisement in the *Canberra Times* and a sign placed on the verge of Karralika. Immediate neighbours, consistent with the process, will receive formal notification via the mail.

I think that it is important for the government to know whether the Karralika facility is going to proceed at Fadden. For that reason, I am proposing to exercise my call-in power either to refuse or to approve the application. That will involve a referral of the development application to the Planning and Land Council for its expert advice, as is required under the planning and land acts. I will also move a motion in this place so that members of this place can express a view on whether this facility should proceed.

Once that is done, I will then determine the application and either refuse it or approve it. If I refuse the application, the government will at least know that it needs to find another site. If I approve it, the community, the government and the Assembly will know that

these important drug rehabilitation beds will be available through construction commencing in the middle of this year or towards the second half of this calendar year.

Mr Speaker, this process is fair. It is a transparent process that puts all the information on the table. It also enables a timely resolution of whether this development will proceed. Make no mistake about it: we need more drug rehabilitation beds in Canberra, we need them as a matter of urgency, and the government does not want to see these beds held up and a decision on this facility held up for a period of 12 or 18 months, which is the prospect that the Liberals seem to be proposing to the Assembly at the moment.

Ministerial responsibility

MRS BURKE: My question is to the Minister for Education, Youth and Family Services, Ms Gallagher. As minister, are you personally responsible for the failure of your department to comply with the Children and Young People Act 1999?

MS GALLAGHER: The Children and Young People Act places responsibility for the care and protection of children in the territory in the hands of the chief executive. I am certainly responsible for the department. I did not receive advice from the department at any stage alerting me to their failure to adhere to their responsibilities under the Children and Young People Act.

I explained this morning that I am not walking away from my responsibilities and that my responsibility is to move forward. I have outlined the plan and have spoken at length to it. I have given every bit of information provided by the commissioner to members of the Assembly for them to see what I am being advised about. I hope that I get the support of the Assembly to move forward and rise a bit above politics.

Mrs Burke: Ha!

MS GALLAGHER: No, seriously! I hope I get the support to move this and work together in the best interests of children and young people in the territory.

Mrs Burke: You're in a position of trust, Minister.

MS GALLAGHER: Well, Mrs Burke, what have you done? You've gone on radio. What did Mike Jeffreys call you? A "very upset Mrs Burke" went on radio this morning discussing issues—

Mrs Dunne: Mr Speaker, I rise on a point of order. The minister is not being relevant in answering the question. Under standing order 118 (a), she should be giving an answer about responsibility and what she knew and not about what Mrs Burke has done. Mrs Burke is not the minister at the table.

MR SPEAKER: Minister, respond to the substance of the question.

MS GALLAGHER: Since I took responsibility for this matter, mapped out a way forward, outlined resources and did everything I possibility could to ensure that children in the care of the territory are safe and protected, Mrs Burke has put out a number of press releases and that is about it. That is all she has done. Apparently, she has been

contacted by hundreds of concerned constituents. Apparently, she knows of cases of children that concern her. She has not at any stage referred any of those matters to me, but she has managed to put out a number of press releases. What I am seeking is the support of the Assembly to move forward.

Mrs Dunne: Point of order.

MS GALLAGHER: I have finished.

Mrs Dunne: I refer to standing order 118 (a) on relevance. This is not about Mrs Burke; this is a question to the minister about her responsibilities.

Mr Corbell: Has she complied with her statutory obligation to report instances of abuse? Did you know that you have a statutory obligation to report instances of abuse?

Mrs Burke: Watch it, Mr Corbell! Go steady!

THE SPEAKER: Order, members! The minister is entitled to put things in context.

MRS BURKE: I have a supplementary question. Again, I ask the minister: are you specifically responsible for the failure of your department to comply with the Children and Young People Act?

MS GALLAGHER: I have taken responsibility for it, Mrs Burke. I can answer this in a number of different ways. I have taken responsibility for the fact that I was inadequately advised by my department, as have previous ministers over a number of years.

Mrs Burke: You can't pass the buck.

MS GALLAGHER: I have taken responsibility.

Child protection

MR STEFANIAK: My question is to the minister for family services. Minister, you have been family services minister for over a year now. Did you at any stage during that year ask questions of the department relating to child protection and the protection and rights of children in care?

Government members interjecting—

MR SPEAKER: Order, members! Minister, do you want the question repeated?

MS GALLAGHER: Sorry, would you repeat the end?

MR STEFANIAK: Yes, I will, if you would calm your colleagues. Minister, you have been the minister for over a year. Did you at any stage during that year ask questions of the department relating to child protection and the protection and rights of children in care?

MS GALLAGHER: Yes, I did on a number of occasions. In fact, I had frequent briefings. I meet with the department twice a week. More often than not, the issue of family services was raised at those meetings, not only with regard to the inquiry that the standing committee was proceeding with, but concerning issues such as the dramatic increases in the number of reports being made and how those reports were being handled, adequate resourcing for Family Services—which led to a budget bid that was approved in the budget—and issues surrounding the coronial inquiry into the death of the young girl in the territory.

I had a number of briefings. I had several briefings on the Refocus project that was under way and which the Community Advocate had commented that she was pleased about. I imagine that there are other matters—individual cases—on which, when they were brought to the attention of my office, I received briefings as well.

This is an area on which I have reflected at length over the past six weeks or so. I did not at any stage ask them if they were meeting all their statutory requirements under the act, nor did they provide me with any advice or reasons that would lead me to believe that they were not. That is something that will not occur again. In relation to the information that I was given, I was briefed on a whole range of issues but I was not briefed specifically about that issue.

MR STEFANIAK: When did you first become aware of the Community Advocate's reporting on the program?

MS GALLAGHER: Sorry, reporting on the what?

Mr Stefaniak: On Refocus.

MS GALLAGHER: I would have to check my records, Mr Stefaniak, but I think it was probably around the time of the coronial inquiry, when she had provided information to Family Services about its Refocus work and Family Services had appeared at the coronial inquiry. I am just speaking off the top of my head and I will check my records and let you know.

Water—Canberra supply

MR HARGREAVES: My question is directed to the Chief Minister. The Chief Minister will be aware of yesterday's announcement that the Liberals, if elected to government, will build a new dam in the Naas Valley. In making this announcement, did the opposition leader, as reported in the *Canberra Times*, "upstage the government"? What action is the government taking to secure Canberra's future water supply?

MR STANHOPE: Thank you very much for your question, Mr Hargreaves. As you say, it is a particularly important question at this time of our development and progress. Yes, I was a touch surprised to read in the *Canberra Times* that I had been upstaged by the Leader of the Opposition. I must say that I do not feel a bit upstaged—not in any sense of the word.

It is true that we have been engaged in considerations about Canberra's water supply for some time now. I think that members would be aware that I have been particularly keen to promote a public debate around water and water issues in the broader community. It is undoubted that the community has some very significant decisions to make about water. We have been engaged in the debate for well over a year. We have been developing for the first time since self-government a water strategy. It is the first time at any stage that any government has sought to look seriously at the sustainable use of water and the development of a sustainable water strategy that will take us into the future.

We have seen the fruit of that particular effort through the release just last November of the draft strategy "Think Water, Act Water". As indicated in that strategy, I think it is important that we recall and reflect on the fact that in the draft strategy released last November the government stated it had asked Actew to coordinate the investigation into the possible large-scale augmentation of Canberra's water supply.

Actew has been engaged in that work. It is quite significant and detailed work. This goes to the nub of the announcement that the opposition made yesterday on the basis of a meeting of their party room held on Saturday or Sunday. It would be the most detailed consultation on any major capital works project in the history of the ACT. It was reported in today's *Canberra Times* that the Liberal Party consultation on a new dam in the Naas Valley was to ring the owner of an affected property. As the owner reports today, Mrs Dunne rang him and gloated about the fact, "Guess what! We are going to drown your entire property under a new dam; consider yourself consulted." Talk about consultation!

This goes to the nub of this major capital works program. Consultation on the biggest piece of infrastructure since self-government was a phone call, in a gloating way, on a Sunday afternoon to a land owner. It is quite remarkable, isn't it? Here we are talking about a major piece of capital works—perhaps $150 million to $200 million. There is no budget, no business case, no environmental impact statement, no consultation, absolutely no climate work, no hydrological study and no assessment of where the money is going to come from. Where is the money going to come from? We are told, "We will put up rates or we will borrow it." This is the nature and the status of the consideration that went into the Liberal Party's decision to build a dam in the Naas Valley. That is about it.

We need to look at it. There was no consultation, no business case or plan, no budget, no environment impact study, no climate study, no hydrological study, no engineering studies. I think most worrying there was no commitment to demand strategies, no commitment to a water strategy, no commitment to how to reduce water use and no commitment to looking at any other option. Why would you just rush out there and say, "Panic, panic, panic; we need a new dam. Let's plonk it down here." There are other very reasonable options that should be considered and are being considered by the government. Everyone knows they are being considered by the government. Everybody knows that Actew is working with the CSIRO, that Actew is working with Ecowise to consider all these issues. It really is a most worrying way to do business.

I am sure that I know what everyone in Canberra thought when they saw reports of this particular decision. I know I thought it instantly and I know everybody else in Canberra

thought it: Bruce Stadium mark 2. Didn't it just look like Bruce Stadium all over again—the project that was going to cost $14 million, with no business case, no real budget, no analysis of options? It is Bruce Stadium mark 2. They have learnt nothing.

MR HARGREAVES: Has Actew furnished the government with any reports that might identify a number of options?

MR STANHOPE: Thank you, Mr Hargreaves. Actew, in concert with CSIRO and Ecowise, is looking at a number of options. They are doing a rigorous and strategic assessment of the options that we need to look at into the future. That is the point. We do have time. We do have options. We do have a capacity to reduce our consumption of water. We have done the work on that. We are introducing and will introduce a whole range of measures to reduce water consumption in the short term to allow us to put off this decision for as long as we can. Of course, there many financial implications associated with that.

Yes, Actew has identified a number of possibilities. The three preferred options that are being given consideration at this stage are to raise the wall of the existing Cotter Dam by 50 metres, to build a new dam in the Gudgenby-Naas Valley or to obtain existing water from the NSW Tantangara Dam. In relation to each of those options there are a whole range of social, economic, environmental, hydrological, climate change and rainfall pattern issues that will be taken into consideration. We should not forget, of course, that this work is being done in the context of an overarching strategic plan in relation to water use—something that is vitally important that allows us to commit to the reduction of our use of potable water and our reuse of grey water. These are things that will allow us in the short term to reduce our water consumption by probably up to 10 per cent if we are serious about this issue.

Of course, one knows that decision by the Liberals was taken in a rush only in the last few days. It was only in January this year, of course, that Mrs Dunne had a significant article published in the *Canberra Times* on planning for a new dam. Of course, in relation to its discussion of environmental flows it was completely wrong headed. It was totally ignorant around the issue of environmental flows. It is actually completely back the front in terms of the significance and importance of environmental flows.

There is something in that article that is very relevant to the decision that was taken just yesterday. Mrs Dunne refers to the other proposals for increasing ACT water supply. She includes building the Tennant Dam, enlarging the Cotter Dam and the Tantangara pipeline—things that we are doing detailed analysis of.

Mrs Dunne goes on to say that we need to remember that all of these options rely on extracting more water from the Murray-Darling Basin and all would involve reducing environmental flows out of the ACT as population increases. She goes on to say that what we should be considering in relation to these issues is that rather than extracting water from our most highly stressed system—a system whose water is all spoken for already for agriculture, electricity generation and drinking water from Adaminaby to Adelaide—Mrs Dunne's preferred option of a dam in the Shoalhaven would trap flood water that was just running into the sea, in any event. So Mrs Dunne a month ago was arguing against a dam in our catchment.

Ministerial responsibility

MRS DUNNE: My question is to the Minister for Education, Youth and Family Services. In her statement this morning she claimed that she first found out about the failure of her department to follow the law regarding advising the Community Advocate on 11 December, when her department advised her. However, she claimed to have read the Community Services and Social Equity Committee's report entitled the *Rights, Interests and Well-being of Children and Young People*, which states "…the Committee is extremely concerned at reports that Family Services has failed to comply with its obligations under the Act." She also seemed to claim that she did not read that section of the report, which is up there with: I only endorse the cover.

Ms Gallagher: No, I did not ever say that. I said I read the entire report.

MRS DUNNE: In that case, when did the minister become aware that her department was not complying with its obligations under the act?

MS GALLAGHER: I was advised for the first time that the department was not meeting its statutory obligations when the department briefed me on 11 December. I admitted again in my speech today that when I read that part of the report I had not picked up on it as early as I should have and that that was an area where I should have done better. When I reflect on that report, the reason I did not question the department about whether that was the case was that the report was relying on concerns raised by the Community Advocate that this part of the act was not being met. If the member reads on through the report she will see that the committee stopped short of a recommendation. The report has other paragraphs in it where it says "However, the committee is heartened by the views of the Community Advocate that she is supportive of the Refocus project and Ms Baikie's appointment as director." It will keep a watching brief on this matter.

When I look back on why it did not set off alarm bells in my head, it was the way the report read. It did not make a recommendation. The report was somewhat ambiguous. Although the statements are very clear, there are other paragraphs in the report where one could read that the matter was in hand and being dealt with. The area where I should have done better was to question the department about whether that was the case. In briefings I got on the government's response to the inquiry into the rights, interests and wellbeing of children and young people, I was never given advice that it was a problem. That is the area where I should have done better. On reflection, I needed to say to the department: are you meeting your obligations under section 162 (2)? I did not do that, and I did not do that because—and this is the only answer I can give on reflection—when I read the report there was not a recommendation about it. The committee's view was that it was serious. It thought the matter was in hand and it was going to keep a watching eye on it. I was given no indication that that was not the case.

MRS DUNNE: I ask a supplementary question. Given that this is such a fundamental part of your ministerial responsibilities, when did you read the report of the Standing Committee on Community Services and Social Equity? Did you read all of the report or just the recommendations?

MS GALLAGHER: Again, I think I covered this in my statement this morning. I said I read the entire report within days of it being tabled. I cannot give you the specific date I took it home. I think I went to Melbourne the day after it was tabled and I took it and read it on the plane. I did a media interview on one recommendation in the back seat of a taxi in Melbourne. I was reading it over the few days after it was tabled. I cannot remember the second part of your question, but I think I have answered it.

Mrs Dunne: Did you read all of the report or just the recommendations?

MS GALLAGHER: Yes, I did read all of the report. As I have said on a number of occasions today, both to the media and in this place, the area where I should have done better was that I should have picked up on it earlier.

Student accommodation

MS DUNDAS: My question is to the Chief Minister. On 18 November last year he stated that the ACT government was currently working with a full range of stakeholders in relation to the issue of student accommodation and that the ACT Council of Education Export had met and identified the issues of ensuring that Canberra remained as attractive a destination for students as possible. Will the Chief Minister inform the Assembly of the outcome of his work with stakeholders and what the government is planning to do to address the chronic shortage of student accommodation in the territory?

MR STANHOPE: I do have some information in relation to this issue, but I think it would be more useful to ask the Minister for Disability, Housing and Community Services, Mr Wood, to respond to the detailed question. In recent times he has been doing some significant work on behalf of the government in relation to student accommodation and he can give a much fuller response than I am currently able to.

MR WOOD: One of the significant stakeholders is ACT Housing and the Minister for Disability, Housing and Community Services. I have had conversations about this. I have made the point on a number of occasions that the ANU in particular has been somewhat responsible for the crisis because it has sold off its student accommodation and put it to other purposes over the years. At the same time, we acknowledge the benefit that can be received. It is part of our policy, we acknowledge, to seek to attract students into Canberra. So there is some responsibility there. It is a joint responsibility. We have been looking at the issues. We provide some houses to post-graduate students. We are happy to do that. In many circumstances those are houses we intend to sell in due course. They are not there as a permanent accommodation source.

Following further discussions, I can indicate that we will go back to the university and to one of our community housing providers, as ACT Housing is prepared to offer up Currong for the remainder of this year for students. Already quite a number of tenants have left Currong pending its closure. It is a good scheme. There is mutual benefit here. For obvious reasons we are keen to see the building utilised in this period rather than see it become more and more empty. So, we will offer that up as an emergency measure this year for university students.

MS DUNDAS: I have a supplementary question. With that announcement that Currong will be offered as student accommodation, what renovations will be taking place at Currong to ensure that it is a safe place for students, let alone anybody, to reside?

MR WOOD: That is a fair question. I repeat, I have not yet made that offer. We have come through our own processes, so I will make that offer to the universities and to the community housing providers. I have always maintained that Currong is safe. It would not meet the more stringent current standards if we were now to build accommodation of that sort. The fire safety upgrade that we are doing in other places is simply a recognition of new advice. You will remember all the turmoil about that from the legal side of things. We assure the current and future tenants that it is safe. A new building—and renovated buildings in other parts of Canberra, with our fire safety program—would have all the modern safety measures incorporated.

Child protection

MR PRATT: My question is to the Minister for Education, Youth and Family Services, Ms Gallagher. On 6 February two public servants were stood down following the receipt of an interim report from the Commissioner for Public Administration. *The Canberra Times* reports that the commissioner stated:

> In the ACT we have a group of children for whom safety is not assured, and this is directly as a result of the Department of Education, Youth and Family Services not meeting statutory requirements.

On the other hand, on the ABC news of 7 February you said:

> As to the immediate safety of children, I am assured that they are safe.

Why are you assuring the community that those children that you let down in the past are safe, when the commissioner could not offer such assurances and the Chief Minister accepted her advice?

MS GALLAGHER: The issue we are dealing with today is very complicated. It deals with allegations of abuse of children in care over a number of years. The commissioner is reviewing all the files back to May 2000 relating to allegations of abuse in care. As the files are made available from Family Services, they are handed to the Office of the Community Advocate and they form part of the commissioner's inquiry.

You have the document that I received and which I tabled this morning, in addition to Gwenn Murray's interpretation of some of the early analysis that there was insufficient information on those files about the investigations into the allegations of abuse in care going back a number of years for her to give the Chief Minister and me an assurance that those children were given the care and protection they deserved at the time of the investigations.

I rang the community advocate on Friday afternoon on receipt of the report from the commissioner—which I believe the Chief Minister and I received at about quarter past four—because, in that report, Gwenn Murray, in her attachment, said that there were six children that she could not assure us—Mr Pratt, will you listen to the answer? This is an

extremely serious issue and I do not know how you can listen to me and Mrs Dunne at the same time. But if you are not interested in what I did to ensure that the children in the care of the territory were safe—

Mr Pratt: Answer the question Minister.

MS GALLAGHER: I was answering the question before you stopped listening and started chatting. On receipt of that report I rang the community advocate and enquired as to what needed to be done for the six children that she could not say were safe and what she needed to be done today for those six children. She replied that she was not of the view that those children were at any immediate risk, that she would review their files on Monday, and that her concerns related to the fact that she was not able to look at the information about those children rather than the fact that they were in any immediate danger.

MR PRATT: I ask a supplementary question. Why did the minister not accept the interim report of the commissioner's committee—a committee that has access to relevant records and that is advised by a couple of independent experts—that the safety of the children that the minister has failed cannot be assured?

MS GALLAGHER: Mr Pratt just does not get it. Today we are not discussing the safety and wellbeing of these children; we are discussing incidents or cases of abuse that are alleged to have occurred over a number of years. I made phone calls and I sought advice from the department. I asked the department to tell me whether children in the care of the territory are safe today. I received advice from the department. I rang the Community Advocate and asked her to assure me that children in the care of the territory are safe today. Yesterday morning Mrs Burke, in a radio interview, said, "We also have vulnerable children who are still being inflicted with abuse in various parts of care." What does she know that I do not know?

Mrs Burke: Are they lying?

MS GALLAGHER: What has the member done about it?

Mrs Burke: They are trying to report it to your department and your department is not listening.

MS GALLAGHER: The member is aware of cases of abuse in care and she is doing nothing about it other than crying on the Mike Jeffreys show. It is a disgrace.

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

Public Sector Management Act—executive contracts
Papers and statement by minister

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs): For the information of members, I present the following papers:

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

Long term contracts:
Owen Smalley, dated 2 December 2003.
Ron Foster, dated 17 October 2001.

Short term contracts:
Michael Harris, dated 20 November 2003.
Lincoln Hawkins, dated 19 December 2003.
Megan Smithies, dated 1 December 2003.
George Tomlins, dated 19 December 2003.
Ken Douglas, dated 9 December 2003.
Gordon Lowe, dated 12 January 2004.
Michael Bateman, dated 17 December 2003.
Stephan Finn, dated 19 January 2004.
Roderick John Nicholas, dated 29 January 2004.
Lynette Allan, dated 20 January 2004.

Schedule D variations:
Dorte Ekelund, dated 23 December 2003 and 24 December 2003.
Paul Dugdale, dated 25 November 2003.
Paul Lewis, dated 23 December 2003.
Garrick Calnan, dated 23 December 2003.
Doug Jackman, dated 17 December 2003.
Ron Foster, dated 22 December 2003.
Bernard Sheville, dated 8 January 2004.
Ademola Bojuwoye, dated 17 December 2003.

I seek leave to make a statement.

Leave granted.

MR STANHOPE: I have presented another set of executive contracts. These documents are tabled in accordance with sections 31A and 79 of the Public Sector Management Act, which require the tabling of all executive contracts and contract variations. Contracts were previously tabled on 9 December 2003. Today, I have presented two long-term contracts, 10 short-term contracts and eight contract variations. The details are being circulated to members.

Papers

Mr Stanhope presented the following papers:

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

Part-Time Holders of Public Office—Education, Youth and Family Services Portfolio—Determination No 131, dated 19 August 2003.

Part-Time Holders of Public Office—Determination No 133, dated 18 December 2003.

Full-Time Holders of Public Office—Relocation Expenses—Determination No 134, dated 18 December 2003.

Commissioner for Public Administration—Pro-rata Entitlements—Determination No 135, dated 21 October 2003.

Commissioner for Surveys—Pro-rata Entitlements—Determination No 136, dated 21 October 2003.

Chief Justice of the Supreme Court—Determination No 137, dated 18 December 2003.

President of the Court of Appeal—Determination No 138, dated 18 December 2003.

Master of the Supreme Court—Determination No 139, dated 18 December 2003.

Chief Magistrate, Magistrates and Special Magistrates—Determination No 140, dated 18 December 2003.

Full-Time Holders of Public Office—President of the Administrative Appeals Tribunal—Determination No 141, dated 18 December 2003.

Members of the Legislative Assembly—Travel for Study/Investigation Purposes—Determination No 142, dated 18 December 2003.

ACT Law Reform Commission—Report No 20—Substitute Parentage Agreements, dated 19 December 2003.

ACT Criminal Justice Statistical Profile—September 2003 quarter.

Film Festival Guidelines commencing 1 February 2004, prepared by the Office of Film and Literature Classification—Standing Committee of Attorneys-General: Censorship.

Health—Standing Committee
Report 5—government response

MR CORBELL (Minister for Health and Minister for Planning): For the information of members, I present the following paper:

> Health—Standing Committee—Report No. 5—*Access to Needles and Syringes by Intravenous Drug* Users—Government response.

The report was presented to the Assembly on 28 August. I ask for leave to make a statement.

Leave granted.

MR CORBELL: Mr Speaker, the Standing Committee on Health made 13 recommendations relating to access to needles and syringes by intravenous drug users

in the ACT. The government response agrees with five of the committee's recommendations, gives in-principle agreement to another five, and notes the content of the remaining three recommendations.

The government response makes a number of suggestions with respect to improving access to needles and syringes in the ACT. These relate to improving the information available to both the user groups and the community and increasing the number, location and diversity of injecting equipment outlets. Education of user groups in the community is essential to ensuring a high level of awareness of supply and disposal standards and guidelines. A significant amount of information and education material is currently available to both intravenous drug users and the wider community.

In 2002, the government developed three information brochures to inform specific target groups—injecting drug users and people with diabetes and other medical conditions—about safe disposal and to inform the public about correct health and safety procedures in the event of discovering discarded injecting equipment. Earlier this year the effectiveness of the three brochures was reviewed and a single revised brochure was subsequently developed. The brochure was published in mid-2003 and is now available from libraries, shopfronts, health centres, Directions ACT and other associations. The brochure is also being distributed through pharmacies with syringe packs.

The ACT has one of the highest return rates of needles and syringes in Australia. During 2002, the recovery rate was between 85 and 90 per cent. Over the past 12 months there has been a significant decrease in the number of sharps disposed of inappropriately in public toilets and open spaces. All public toilets have been fitted with disposal-safe chutes and many large bins have also been put in place. A free pick-up service for sharps from private land and ACT Housing properties has also been introduced.

The government will continue to monitor the effect of existing information and education material to ensure that safe disposal standards remain high. The government will also continue to coordinate education programs aimed at educating all sectors of the community about these issues and will continue to improve the availability and use of appropriate infrastructure for the recovery of used sharps.

Mr Speaker, access to clean injecting equipment for intravenous drug users at a range of times and from a variety of locations is vital to reducing the prevalence of unsafe injecting. The government believes that it is important to assess opportunities to increase the number and opening hours of needle and syringe outlets. The government has made available a quarter of a million dollars this financial year to support the implementation of a number of high-priority projects identified in the draft ACT alcohol, tobacco and other drugs strategy finalised in November last year.

These priorities include establishing a trial of vending machines for dispensing needles and syringes in the ACT. The trial will provide 24-hour access to sterile injecting equipment across a range of sites in the ACT. The ACT government will implement this trial in early 2004. The introduction of vending machines in the ACT will be a cost-effective alternative to extending opening hours of current needle and syringe program outlets.

In addition to increasing access, the machines have the potential to service a hidden population of injecting drug users who do require complete confidentiality. The main objectives of introducing vending machines include increased access to the means of blood-borne disease prevention, complementation of the educative role of the needle and syringe program, the provision of anonymous 24-hour access to sterile injecting equipment, provision of access to new equipment for intravenous drug users not currently utilising any existing service, the provision of a cost-effective means of dispensing needles and syringes and the maximisation of the proper disposal of used equipment through the provision of a disposal bin.

The location and type of vending machine is still being negotiated. The experience of other jurisdictions shows that the locations for vending machines must be carefully chosen. The machines need to be placed in areas that users frequent and the users' need for anonymity must be balanced with the need to protect the machines from vandalism or inappropriate use. The machines must also be fitted with protective metal grills to help combat vandalism. Installation of sharps disposal facilities nearby and reliable servicing of the machines are also essential.

The government is actively encouraging community pharmacies to increase their involvement in the needle and syringe program as well. The government supports the principles of harm minimisation in correctional facilities. However, a range of issues need to be considered in the development of an appropriate model, such as duty of care issues for custodians and occupational health and safety issues for staff. Although the adult correctional facility environment has been identified as high risk in terms of blood-borne viral infection due to the high rates of injecting, tattooing, unsafe sexual practice and the high prevalence of hepatitis C, the extent of these problems in some or all of the ACT's facilities is unclear. The government will examine the costs and benefits, and indeed feasibility, of these committee recommendations further in conjunction with corrections officers, youth justice staff and relevant health experts.

Mr Speaker, the government recognises the need to address barriers faced by Aboriginal and Torres Strait Islander people in accessing mainstream services through the provision of culturally sensitive and appropriate services that are developed in collaboration with the Aboriginal and Torres Strait Islander communities. The government also believes that needle and syringe outlets should be culturally sensitive to Aboriginal and Torres Strait Islander people and culturally and linguistically diverse clients. The government will continue to work with these communities to progress these issues further.

The government believes that the current program operating in the ACT is, in the main, a very good system. However, improvements can be made to the program to ensure better access to injecting equipment for the ACT community and better information and education about intravenous drug use. The government thanks the Standing Committee on Health for the work undertaken in relation to these issues and is committed to progressing the implementation of a number of the report's recommendations. I commend the report to the Assembly.

MS TUCKER: I seek leave to respond to the minister's statement.

Leave granted.

MS TUCKER: Basically, the minister's response is encouraging in lots of ways, but I want to make the point that I am concerned about the government's response to the recommendations of the committee, particularly in regard to people who are incarcerated. The committee did quite a bit of work on that and made recommendations that were applicable to all correctional settings, and that included the Quamby youth detention centre, the Belconnen Remand Centre, the periodic detention centre and the planned prison.

The evidence that came from the government to the committee on that seems to me to be pretty much what it is still saying, which is disappointing because the committee had a lot of evidence that one would have hoped or thought would have given the government a slightly different approach to the issue. I note that it is noting the recommendations, which is not satisfactory. It deserves a much stronger response than that. Basically, through the committee work we made it quite clear that no-one is going to deny that people are injecting drugs in correctional settings. No-one is pretending that it is not happening here.

The Australian Hepatitis Council submitted to the committee that the ACT has the opportunity to ensure that an ACT prison is not regarded as an incubator of hepatitis C infection, as prisons in other jurisdictions are rightly described. There is also the question of HIV/AIDS, and the United Nations program on HIV/AIDS made the point that prisoners are the community—they come from the community and they return to it. Protection of prisoners is protection of our community.

Another point that was made quite clearly to the committee was that there are ways that we can bring injecting equipment exchange into corrections settings. A number of models are already working in other jurisdictions. We acknowledge the need to work with the officers and the duty of care issues, but the submission that we got from the officer representing the industry was that he was open-minded, they were open to having that discussion. In his response the minister said the government is happy to work with the officers and the union, I guess, on that issue.

That is good, but I really was hoping to see commitment from the government to doing that because basic public health issues really have to be taken on. I know it takes a certain amount of courage because there is a bit of a dilemma that it has to admit that it cannot keep drugs out of a prison or a remand centre, or the Quamby juvenile justice facility, but that is the reality and no-one is denying that. So the government should get over the embarrassment it might feel about that and work with the issue to deal with the spread of blood-borne diseases.

I remind the minister that we made it clear that it is really quite probable that the ACT will be forced to do so anyway. We could ask them to do that before the legality of refusing to provide the duty of care that allows prisoners and detainees the same level of protection from blood-borne viruses as the wider community is challenged in the courts. That happened with condoms, when the government's preventing incarcerated people

from accessing condoms was challenged in court. Basically, the court found on appeal that individual prisoners might be entitled to injunctive or other relief if they could show that the refusal of the department to permit them to use condoms constituted a breach of the duty of care it owed them.

It was proposed to the committee that it will be only a matter of time before a similar case is brought forward by an individual who had effectively accessed an injecting equipment exchange program and protected themselves from contracting a blood-borne virus and who, for whatever reason, was incarcerated with no ability to continue to take steps to prevent a blood-borne virus transmission. It is a very fundamental rights issue. As the government is introducing a bill of rights, I would have hoped to have seen that recognised in this response and to have seen a much more positive response to the recommendations regarding correctional settings.

Mental health system
Papers and statement by minister

MR CORBELL (Minister for Health and Minister for Planning): I present the following papers:

> Recent reports concerning the mental health system—
>
> > Mental Health ACT—Response to recommendations on the Community and Health Complaints Commissioner, Mr K Patterson Report: The Investigation into Risk of Harm to Clients of Mental Health Services, November 2002, dated December 2003.
> >
> > Mental Health ACT—Response to recommendations on the Ms K LaRoche and Mr R Mann Report: The Review of the Design and Operational Practice in the Psychiatric Services Unit, the Canberra Hospital, May 2003—Progress Report, dated December 2003.

I ask for leave to make a statement.

Leave granted.

MR CORBELL: Mr Speaker, on 21 October the Standing Committee on Health tabled report 6, entitled *Report on recent reports concerning the mental health system*. In response to the report, I undertook to report to the Assembly on the progress of Mental Health ACT on implementing the recommendations arising out of the report of the ACT Health and Community Care Services Complaints Commissioner, Mr Ken Patterson, and the Mr Mann and Ms LaRoche report on the review of the design and operation of the psychiatry services unit at Canberra Hospital.

In December 2002, Mr Stanhope, as the Minister for Health, undertook to provide this Assembly with a progress report on implementation of the recommendations of the Patterson report and other improvements in mental health services in December 2003. Mental Health ACT has been the subject of five reviews following the tragic deaths of people while they were hospitalised and receiving psychiatric treatment. This intense scrutiny continues with the current coronial inquiries into the deaths of these people.

The government is committed to supporting people with mental disorders and to addressing the mental health needs of the community. The first priority is providing quality mental health services for persons with serious mental disorders. The reviews of the past 18 months have contributed significantly to the implementation of reform in the mental health sector.

This government's commitment to mental health has seen the budget funding to the sector grow substantially from the position we inherited from the previous government. The national mental health report for 2002 states that the ACT spent the least of all the states and territories on mental health in the financial year 1999-2000, at $67 per head of population. I am pleased to report that now, with the most recent ACT budget, our target for mental health is $117 per head of population. This government has committed these additional resources, particularly in the areas of child and adolescent and older persons mental health. We have also reformed the structure of mental health services, establishing a single point of accountability for policy, planning, service development and delivery with the formation of Mental Health ACT.

I am informed that the ACT mental health strategy and action plan is being finalised. The strategy and action plan will develop a population-based framework for resource allocation that addresses the range of mental health needs across the ACT. I have tabled today the government response to the Standing Committee on Health report 6. I have also tabled the progress reports on the implementation of the recommendations of Mr Patterson's report and of the Mann and LaRoche report. During the coming year I will table a progress report on a quarterly basis, that is, within 30 days of the end of the relevant financial quarters, in line with the other quarterly health reports. I commend the report to the Assembly.

Respite care

Paper and statement by minister

MR CORBELL (Minister for Health and Minister for Planning): I present the following paper:

> Sustaining Caring Relationships—Final Report of the Met and Unmet Needs in Respite Care Project—Government response.

I ask for leave to make a statement.

Leave granted.

MR CORBELL: I am pleased to table today the government response to the report on met and unmet needs in respite care. As members would be aware, the respite report was tabled in the Assembly in June 2003 following a government commitment to establish empirical evidence on the extent of met and unmet needs in respite care, now and into the future.

The government has taken time to assess the contents of the respite report and the recommendations put forward. Of the 28 recommendations made, 25 were agreed to or agreed to in principle. Three were noted and will inform future service planning. The

respite report has identified a set of principles as a guide to reform in the provision of respite care services. The principles identified are, firstly, that the system should foster and encourage independence and sustainable relationships; secondly, that services and policies should be consumer and carer focused; thirdly, that service delivery should be integrated and coordinated; fourthly, that services and policies should be flexible enough to meet people's real needs; and, fifthly, that the quantity of services available must be sufficient to meet the need of carers and consumers.

The government is supportive of these principles in guiding reform and meeting respite care needs in our community. These principles are consistent with those that have been identified in the ACT government's caring for carers policy recently released by my colleague Mr Wood. In undertaking the respite report, the government was seeking to have a strong evidence base to guide policy and service delivery responses in respite care.

The consultancy found there was a lack of quantitative information on the level of service usage and unmet need in respite care, as well as highlighting a number of deficiencies in the provision of quality respite care in the following areas: appropriateness of models of care relative to the needs of carers and families; skills and training of the work force; fragmentation of respite services across funding bodies; community sector and mainstream services; the need for adequate data collections to demonstrate need; and access issues for carers of specific client groups, including people with a mental illness, people from culturally and linguistically diverse backgrounds, people with behavioural problems and substance abuse problems and people for whom a medical diagnosis is yet to be given.

I am pleased to reaffirm that in the 2002-03 budget the government committed $1 million per annum for additional respite care services. This funding has been used for additional family support, respite care packages, carers of people and children of parents with a mental illness, reducing the fragmentation of respite services and pilot projects. Based on the findings of the report and the pilots commenced in 2002-03, the government will now focus on establishing innovative and flexible respite and support services for carers of people with challenging behaviours; supporting work force development in the respite sector; continuation of work through ACT Health and the Department of Disability, Housing and Community Services to improve service coordination and access; an evaluation of the flexible family support pilots to demonstrate their effectiveness in meeting the holistic needs of families which enable them to sustain their caring relationships; and additional work around data collection to inform decision making and service funding through evidence.

Funding available in 2003-04 from the respite care budget initiative will assist the government in addressing these issues and moving towards a sustainable and innovative approach to supporting carers and people receiving care. Funding will be allocated to: a tender for innovative models of respite; research on models of best practice respite; work force training; a centralised respite booking and assessment system; and a project for data development. I commend the government response to the Assembly.

Papers

Mr Corbell presented the following papers:

Calvary Public Hospital—Information Bulletins—Patient Activity Data—External Distribution—
November 2003.
December 2003.

The Canberra Hospital—Information Bulletins—Patient Activity Data—
November 2003.
December 2003.

Territory plan—variation No 217
Paper and statement by minister

MR CORBELL (Minister for Health and Minister for Planning): For the information of members, I present the following paper:

> Land (Planning And Environment) Act—Approval of Variation No. 217 to the Territory Plan—Heritage Places Register—Whitley Houses Section 23 Blocks 6, 11 and 12 Griffith and Section 10 Block 4 Braddon, dated 2 February 2004, together with background papers, a copy of the summaries and reports, and a copy of any direction or report required.

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

Leave granted.

MR CORBELL: Mr Speaker, draft variation 217 concerns the entry of the Whitley houses at section 23 blocks 6, 11 and 12 in Griffith and section 10 block 4 in Braddon onto the heritage places register at appendix 5 of the territory plan written statement. The Whitley houses were among the first government-designed and built single-storey detached houses in the functionalist style in Australia. The houses have been assessed by the ACT Heritage Council and found to be of heritage significance. They were included on the interim heritage places register on 26 October 2002 and submitted to the ACT Planning and Land Authority in accordance with section 63 of the Land (Planning and Environment) Act 1991 on 17 December 2002.

The variation was released for public comment on 22 May last year, with comments closing on 4 August last year. Four written submissions were received as a result of public consultation on the draft variations. These submissions expressed general support for the proposal to enter the Whitley houses on the heritage places register. A number of minor revisions were made to the variation as a result of the consultation process.

The Standing Committee on Planning and Environment considered the revised draft variation and, in report 24 of 7 January this year, made three recommendations. The committee's first recommendation was that the government significantly strengthen the existing heritage places register framework to ensure the protection of places of heritage significance that are to be incorporated into residential developments by strengthening the compliance, monitoring and enforcement components to ensure the conservation and significance of such places.

An identified place has heritage protection once it is included on the interim heritage places register. Provided there are no outstanding appeals, it can then be referred to ACTPLA for inclusion on the heritage places register and appendix 5 of the territory plan. This, of course, triggers the draft variation process and the interim register has effect during the draft variation process.

Under part 6 of the land act, development applications in heritage areas are assessed against relevant requirements in the heritage places register or the interim heritage places register and referred to the Heritage Council for advice. The draft variation and development processes have proceeded in accordance with the provisions of the act. The Whitley houses are located in areas where medium-density residential development is permissible under the territory plan. They are close to important transport corridors, commercial areas and employment centres, and it is therefore desirable to allow the sites to be developed at higher densities.

The Heritage Council has agreed that the sites can accommodate additional development while preserving the heritage significance of the houses. The specific requirements in the heritage register have been prepared on this basis. ACTPLA has been consulting with the Heritage Council to promote development solutions that not only protect the heritage values of the houses, but also achieve the strategic objectives of the territory plan.

The committee's second recommendation was that the government implement a simplified framework that provides greater clarity and accelerates the approval and appeal processes associated with entering places onto the heritage places register. The Heritage Council is currently reviewing the listing process with a view to simplifying the procedures involved in heritage registrations. ACTPLA is continuing to work with the council in this regard. The committee's third recommendation was that the government proceed with the implementation of draft variation 217 and to amend the written statement on the territory plan. I commend the variation to members.

Lease variations
Paper and statement by minister

MR CORBELL (Minister for Health and Minister for Planning): For the information of members, I present the following papers:

> Land (Planning and Environment) Act, pursuant to section 216A—Schedules—Leases granted, together with lease variations and change of use charges for the period 1 October 2003 to 31 December 2003.

I ask for leave to make a short statement.

Leave granted.

MR CORBELL: Mr Speaker, section 216A of the Land (Planning and Environment) Act 1991 specifies that a statement be tabled in the Legislative Assembly outlining details of leases granted by direct grant, leases granted to community organisations, leases granted for less than market value and leases granted over public land. The schedules I have tabled cover leases granted for the period 1 October 2003 to

31 December 2003. During the quarter, four leases were issued by direct grant. All four were granted to the Commissioner for Housing in the ACT at no cost.

For the information of members, I have also tabled two other schedules relating to approved lease variations and change of use charge payments received for the same period.

Papers

Mr Wood present the following papers:

Performance reports

Financial Management Act, pursuant to section 30A—Quarterly departmental performance reports for the December quarter 2003-2004 for the following departments or agencies:

ACT Health.
Attorney-General's Portfolio within Department of Justice and Community Safety.
Chief Minister's, dated January 2004.
Disability, Housing and Community Services, dated January 2004.
Economic Development, Business and Tourism and Sport Portfolios within the Chief Minister's Department, dated January 2004.
Education, Youth and Family Services, dated January 2004.
Environment Portfolio within Urban Services.
Industrial Relations Portfolio, ACT Workcover, dated January 2004.
Planning Portfolio within ACT Planning and Land Authority.
Planning Portfolio within Urban Services.
Police and Emergency Services' Portfolio within Department of Justice and Community Safety.
Treasury, dated January 2004.
Urban Services Portfolio.

Subordinate Legislation (including explanatory statements unless otherwise stated)

Legislation Act, pursuant to section 64—

Animal Welfare Act—Animal Welfare (Amphibians in Captivity) Code of Practice Approval 2004—Disallowable Instrument DI2004-4 (LR, 15 January 2004).

Board of Senior Secondary Studies Act—Board of Senior Secondary Studies Appointment 2004 (No 1)—Disallowable Instrument DI2004-15 (LR, 5 February 2004).

Cemeteries and Crematoria Act—Cemeteries and Crematoria (Appointments) 2003 (No 1)—Disallowable Instrument DI2003-322 (LR, 11 December 2003).

Dangerous Goods Act—Dangerous Goods (Asbestos) Amendment Regulations 2003 (No 1)—Subordinate Law SL2003-50 (LR, 22 December 2003).

Firearms Act—Firearms (Extension of Amnesty) Amendment Regulations 2004 (No 1)—Subordinate Law SL2004-3 (LR, 19 January 2004).

Fisheries Act—Fisheries Amendment Regulations 2004 (No 1)—Subordinate Law SL2004-2 (LR, 15 January 2004).

Gambling and Racing Control Act—Gambling and Racing Commission Appointment 2004 (No 1)—Disallowable Instrument DI2004-5 (LR, 15 January 2004).

Government Procurement Act—Government Procurement Appointment 2004 (No 1)—Disallowable Instrument DI2004-1 (LR, 6 January 2004).

Hawkers Act—Hawkers Regulations 2003—Subordinate Law SL2003-46 (LR, 1 December 2003).

Independent Competition and Regulatory Commission Act—Independent Competition and Regulatory Commission (Water Abstraction Charge) Declaration 2003 (No 1)—Disallowable Instrument DI2003-332 (LR, 22 December 2003).

Land (Planning and Environment) Act—Land (Planning and Environment) (Further Rural Lease Grant Conditions) Determination 2003 (No 1)—Disallowable Instrument DI2003-323 (LR, 11 December 2003).

Legal Practitioners Act—

Legal Practitioners (Professional Conduct Board of The Law Society of the Australian Capital Territory) Appointment 2003 (No 1)—Disallowable Instrument DI2003-327 (LR, 18 December 2003).

Legal Practitioners (Professional Conduct Board of The Law Society of the Australian Capital Territory) Appointment 2003 (No 2)—Disallowable Instrument DI2003-328 (LR, 18 December 2003).

Magistrates Court Act—

Magistrates Court (Lakes Infringement Notices) Regulations 2004—Subordinate Law SL2004-4 (LR, 22 January 2004).

Magistrates Court (Fisheries Infringement Notices) Regulations 2004—Subordinate Law SL2004-5 (LR, 22 January 2004).

Mental Health (Treatment and Care) Act—

Mental Health (Treatment and Care) Regulations 2003—Subordinate Law SL2003-47 (LR, 15 December 2003).

Mental Health (Treatment and Care) Mental Health Official Visitor 2003 (No 2)—Disallowable Instrument DI2003-325 (LR, 15 December 2003).

National Exhibition Centre Trust Act—National Exhibition Centre Trust Appointment 2003 (No 2)—Disallowable Instrument DI2003-326 (LR, 18 December 2003).

Nature Conservation Act—Nature Conservation (Species and Ecological Communities) Declaration 2003 (No 2)—Disallowable Instrument DI2003-319 (LR, 8 December 2003).

Podiatrists Act—Podiatrists (Fees) Determination 2004 (No 1)—Disallowable Instrument DI2004-6 (LR, 22 January 2004).

Poisons Act—Poisons (Fees) Determination 2004 (No 1)—Disallowable Instrument DI2004-8 (LR, 22 January 2004).

Public Place Names Act—

Public Place Names 2003, No. 20 (Street Nomenclature—Lyons)—Disallowable Instrument DI2003-304 (LR, 8 December 2003).

Public Place Names 2003, No. 27 (Street Nomenclature—Gungahlin)—Disallowable Instrument DI2003-314 (LR, 8 December 2003).

Public Place Names 2003, No. 11 (Street Nomenclature—Gungahlin)—Disallowable Instrument DI2003-331 (LR, 22 December 2003).

Public Place Names (Gungahlin) Determination 2004 (No 1)—Disallowable Instrument DI2004-11 (LR, 29 January 2004).

Public Place Names (Dunlop) Determination 2004 (No 1)—Disallowable Instrument DI2004-12 (LR, 29 January 2004).

Public Place Names (Conder) Determination 2004 (No 1)—Disallowable Instrument DI2004-13 (LR, 29 January 2004).

Race and Sports Bookmaking Act—Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2003 (No. 3)—Disallowable Instrument DI2003-330 (LR, 19 December 2003).

Road Transport (General) Act—

Road Transport (General) (Parking Ticket Fees) Determination 2003 (No 3)—Disallowable Instrument DI2003-329 (LR, 18 December 2003).

Road Transport (General) Exemption Declaration 2004 (No 1)—Disallowable Instrument DI2004-2 (LR, 6 January 2004).

Road Transport (General) Exemption Declaration 2004 (No 2)—Disallowable Instrument DI2004-3 (LR, 6 January 2004).

Road Transport (General) (Vehicle registration and related fees) Determination 2004 (No 1)—Disallowable Instrument DI2004-7 (LR, 22 January 2004).

Road Transport (General) (Application of Road Transport Legislation) Declaration 2004 (No 1)—Disallowable Instrument DI2004-10 (LR, 27 January 2004).

Road Transport (Offences) Regulations—Road Transport (Offences) (Declaration of Holiday Period) Determination 2003 (No 2)—Disallowable Instrument DI2003-324 (LR, 15 December 2003).

Road Transport (Safety and Traffic Management) Regulations—Road Transport (Safety and Traffic Management) Parking Authority Declaration 2004 (No 1)—Disallowable Instrument DI2004-14 (LR, 2 February 2004).

Supreme Court Act—

Supreme Court Amendment Rules 2003 (No 4)—Subordinate Law SL2003-48 (LR, 15 December 2003).

Supreme Court Amendment Rules 2003 (No 5)—Subordinate Law SL2003-49 (LR, 22 December 2003).

Taxation Administration Act—Taxation Administration (Levy) Determination 2004 (No 1) – Disallowable Instrument DI2004-9 (LR, 22 January 2004).

Taxation (Government Business Enterprises) Act—Taxation (Government Business Enterprises) Amendment Regulations 2004 (No 1)—Subordinate Law SL2004-1 (LR, 6 January 2004).

Utilities Act—Utilities (Water Abstraction Charge) Ministerial Direction 2003 (No 1)—Disallowable Instrument DI2003-333 (LR, 22 December 2003).

Water Resources Act—Water Resources (Fees) Revocation and Determination 2003 (No 2)—Disallowable Instrument DI2003-334 (without explanatory statement) (LR, 23 December 2003).

Child protection
Ministerial statement—paper

MS GALLAGHER (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations): Earlier this morning, I made a ministerial statement in which I alluded to some concerns the Office of the Community Advocate had about releasing information attached to the commissioner's report and which had been used by Ms Gwenn Murray. Whilst I was giving that speech, the Community Advocate, Heather McGregor, wrote to me to explain why she had her concerns. For the information of members, I would like to table that correspondence. I present the following paper:

Children and Young People Act—Copy of a letter to Ms Gallagher from Heather McGregor, Community Advocate, dated 10 February 2004.

Supplementary answer to question on notice
Neighbourhood planning process

MR CORBELL: Mr Speaker, I have an answer to a question that Ms Tucker asked me in the Assembly on 11 December last year in relation to the neighbourhood planning process for the suburbs of Watson, Downer and Hackett. I took the question on notice and I have since written to Ms Tucker, but for the information of members the neighbourhood planning process in the suburbs of Watson, Downer and Hackett commenced in March 2003 with a newsletter distributed to all households in those suburbs in early April. The newsletter detailed the current demographic profile of those suburbs as well as future demographic trends based on the modelling undertaken for the spatial plan. There was no mention in the newsletter of targets for additional dwellings.

Figures of possible additional dwellings in Watson, Downer and Hackett were publicly mentioned for the first time at the visions workshop held at EPIC on 28 May last year. A scenario based on the upper limits of redevelopment activities under the spatial plan was utilised at this workshop to get an indication of where participants thought additional households should be located in the suburbs. The figures were: Downer, 300 dwellings; Watson, 200 dwellings—850 total to include 650 already committed in north Watson—Hackett, 200 dwellings.

Since the workshop these figures have been further refined as additional demographic modelling has been undertaken for the spatial plan and the preferred direction of the spatial plan has been identified. The figures are now Downer, 230 to 300 dwellings; Watson, 160 to 200 dwellings, plus 650 in north Watson; and Hackett 160 to 200 dwellings. It should be noted that these figures do not directly equate with population growth. The number of additional dwellings also attempts to take into account the changes that are already occurring in the demographics of the suburbs—for example, the reduction in average household size as a result of children leaving home, divorce, separation, et cetera. The program also attempts to provide a diversity of dwellings for people to remain in the suburb when their domestic circumstances change—for example, to allow for ageing in place and entry of first home buyers who have grown up in the neighbourhood.

I remind the Assembly that neighbourhood planning is about providing a framework for the future planning of local communities. The figures supplied to the members of the Downer, Watson and Hackett communities assisted them in participating in the process in an informed and meaningful way. Importantly, the draft spatial plan seeks to minimise the negative impacts of urban sprawl and declining inner city populations as a result of demographic change through appropriate and sensible levels of urban renewal.

For the information of members, I present the following papers:

> Neighbourhood Planning—Answer to question without notice asked of Mr Corbell by Ms Tucker and taken on notice on 11 December 2003:
>
>> 2003 Neighbourhood Planning Program—Watson, Downer and Hackett: Implications of the Draft Canberra Spatial Plan, prepared by the Spatial Planning Team in conjunction with Urban Design and Projects and the Neighbourhood

Planning Community Partnerships Team, ACT Planning and Land Authority, dated 10 February 2004.

Draft Context Report, work in progress document dated November 2003 and Draft Canberra Spatial Plan—Sustainability assessment.

Child protection
Publication of papers

MR SMYTH (Leader of the Opposition): Mr Speaker, I ask for leave to move a motion concerning the publication of documents tabled by the Minister for Education, Youth and Family Services in her ministerial statement this morning.

Mr Wood: Would the member explain his intention?

MR SMYTH: Yes, certainly. This morning the minister tabled a report from Commissioner Vardon. At the bottom of her press release she says that the ministerial statements and copy of the commissioner's reports are available from her office. The media have approached for copies of the report. I understand that they have the covering letter, which is the report, but are not being given access to the attachments, which they are concerned to see. If we have total confidence in the process, it is more than appropriate to authorise their publication so that the community can have more confidence in this process.

MR SPEAKER: The question goes to giving full protection to the documents. Is leave granted for Mr Smyth to move a motion along those lines?

Leave granted.

MR SMYTH: Mr Speaker, I move:

> That the documents tabled by the Minister for Education, Youth and Family Services in her Ministerial Statement this morning be authorised for publication, namely:
>
> > Children and Young People Act—Copy of letter to Ms Gallagher from Cheryl Vardon, Commissioner for Public Administration—Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management, dated 6 February 2004.
> >
> > Child Protection in the ACT—Ministerial statement, 10 February 2004.

Question resolved in the affirmative.

Ministerial responsibility
Discussion of matter of public importance

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

> Ministerial responsibility in the ACT.

MR SMYTH (Leader of the Opposition) (3.59): Mr Speaker, in speaking to this matter of public importance I think it is important that we as an Assembly state quite clearly what we understand to be the notion of ministerial responsibility. In the absence of the Chief Minister's code of conduct for his ministers—something which was to be completed, I think, by March 2002 and which the media were told several weeks ago was available for access; "It's just at the printer"—I think it is important that we in this place have an understanding of what this means and what we understand to be the responsibilities and the outcomes for each minister.

Mr Speaker, ministerial responsibility is the central principle of the Westminster system. Equally and importantly, it is central to the ethical standards required for leadership. There are two components of ministerial responsibility: the collective, that of the cabinet, and the individual. Collective ministerial responsibility is where a minister agrees to abide by a cabinet decision even though he or she may have disagreed with a policy proposal before it went to cabinet for consideration. Individual ministerial responsibility is where a minister takes responsibility for the performance of his or her department and is expected to give account in this Assembly of matters relating to his or her department, such as recent events or policy changes.

Mr Speaker, ministerial responsibility is the cornerstone of our system of government. It ensures that the government remains accountable to the Assembly and, ultimately, to the people of Canberra. It is about trust and it is about credibility. Traditionally, collective ministerial responsibility means that members of the government must support agreed government policies or resign. Further, if the government is defeated on a motion of no confidence in the Chief Minister, all ministers must resign from their ministries. This convention is the key to having a properly functioning cabinet system.

Point 1 of the 2001 ministerial code in the UK—you have to go to other sources because we do not know what this Chief Minister's ministerial code is—provides that ministers must uphold the principle of collective responsibility. Our own federal government outlines the principles of collective responsibility in its cabinet handbook. It provides that decisions are reached collectively and, other than in exceptional circumstances, bind all ministers to decisions of the government. The exceptional circumstances are where a minister was not present at the discussions and considers that there were problems with the decision of which cabinet was unaware and may seek to have the issue reopened. All ministers must give their support in public debate to decisions of the government.

The Stanhope government's cabinet handbook provides:

> The Convention of the collective responsibility of Ministers for Government decisions is central to the Cabinet system of government.

It continues:

> Cabinet decisions reflect collective conclusions and are binding on cabinet ministers as Government policy both outside the Party and within. All Ministers are expected to give their support in public debate to decisions of the Government. This convention is based on the proceedings of Cabinet being private and Ministers providing to their colleagues adequate notice of matters to be raised in Cabinet.

It says further:

> Ministers should ensure that policy initiatives or expenditure commitments which do not have Cabinet authority are not announced.

During the second term of the Canberra Liberals there were some changes to the concept of collective responsibility when Mr Moore became a minister. The ministerial code of conduct promulgated in August 1998 stated:

> Mr Michael Moore MLA, a Minister in the seventh Carnell Ministry, retains his status as an Independent Member. In respect of Mr Moore, collective responsibility will apply except for those issues identified by Mr Moore as matters on which he will continue to dissent from stated Government policy and in respect of which he will not participate in the discussions and decisions of Cabinet.

Mr Speaker, these arrangements worked well, with Mr Moore making a very strong and positive contribution to the workings of cabinet. It is a precedent for a future Smyth government if circumstances warrant it. Further examples of history show that Trevor Kaine sacked Bernard Collaery in 1991 for being unable to comply with the collective decisions of cabinet. Federally, in 1989 Gary Punch resigned as Minister for Telecommunications and Aviation Support over a decision to build a third runway at the Kingsford Smith airport. Indeed, in the United Kingdom last year, several ministers, including Robin Cooke and Clair Short, resigned over participation in the Iraq war without the prior approval of the United Nations.

Individual ministerial responsibility means that a minister is responsible to the parliament for the actions of his or her department. He or she is expected to give an account to the Assembly of matters relating to changes within his or her portfolio, such as relevant events or policy changes. The convention is designed to ensure that ministers remain ultimately accountable to the Assembly and ultimately to the people of the ACT.

The Stanhope government has failed to develop a code of conduct after more that two and a quarter years in government and the matter is not covered in the cabinet handbook. We have not seen a statement by the government as to their definition of ministerial responsibility. In this, Mr Speaker, the Chief Minister continues to shirk his duty.

The 1998 ministerial code of conduct provided that ministers have broad responsibility for the operations and performance of their departments and agencies. The federal cabinet handbook provides:

> The secretary of the department is, pursuant to the Public Service Act, responsible "under the Minister" for the general working of the department and for advising the minister in all matters relating to the department.

It goes on to say:

> This does not mean that ministers bear individual liability for all actions of their departments. Where they neither knew, nor should have known about matters of departmental administration which came under scrutiny it is not unreasonable to expect that the secretary or some other senior officer will take responsibility.

> Ministers do, however, have overall responsibility for the administration of their portfolios and for carriage in the Parliament of their accountability obligations resulting from that responsibility. They would be properly held to account for matters for which they were personally responsible, or where they were aware of problems but had not acted to rectify them.

In the UK it is the "principle that it is ministers who are directly accountable to parliament for both their own policies and for the actions of their departments". Indeed, Sir Ivor Jennings in his classic work *The British Constitution* outlined the traditional view of ministerial responsibility. He wrote:

> The responsibility of ministers to the House of Commons is no fiction, though it is not as simple as it sounds. All decisions of any consequence are taken by ministers, either as such or as members of the Cabinet. All decisions taken by civil servants are taken on behalf of ministers and under their control. If the Minister chooses, as in large departments inevitably he must, to leave decisions to civil servants, then he must take the political consequences of any defect of administration, any injustice to an individual or any policy disapproved by the House of Commons.

Government departments have grown in size to such an extent that expecting ministers to make every single decision is unreasonable, or being aware of any problems as soon as they arise is virtually impossible. Another more reasonable standard has been adopted. Ministers are expected to act as soon as they should reasonably have become aware of a problem within their department or agency.

There are three means of determining when a minister should have become aware of a problem: firstly, whether someone in his or her department provided advice either orally or in writing when a problem has arisen; secondly, if an independent watchdog such as an auditor-general or an ombudsman highlights a serious deficiency in the government administration; and, thirdly, if an Assembly committee highlights defects in policy or administration within a department or agency within a minister's department. Should any of these events take place, the Assembly and the community have a reasonable expectation that the minister will act.

Dr Emy, in a submission to the Coombs royal commission on public administration, highlighted the importance of a parliament in maintaining standards of ministerial responsibility. I quote:

> But the House itself has taken too little interest in the procedures and devices it has at its disposal for securing information and accountability. It has failed to use the reports from either independent authorities such as the Public Service Board, or from its own committees such as Public Accounts.

The submission goes on to say:

> Consequently, even the concept of answerability is of little practical significance. It has even less significance if ministers themselves refuse to take this function seriously.

It is up to the Assembly to ensure that appropriate standards of ministerial responsibility are upheld. We must ensure that government ministers take Assembly reports seriously

and respond to them in a timely and appropriate manner. It is up to us to ensure that the government takes reports by the Auditor-General, the Ombudsman and the Community Advocate seriously. Especially when there is a minority government, we should not see the government and its ministers treating the Assembly with contempt. The government is ultimately accountable to the people for its actions through us. It is up to the Assembly to ensure that the ACT government meets its responsibility to the community.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (4.09): This is an important debate and I am more than happy to debate at any time issues around the Westminster system and around ministerial responsibility. This certainly goes very much to the heart of a strong and operating democracy. It is a debate we have had on a number of occasions in this Assembly. Certainly, it is a debate on which both sides of the chamber have expressed vigorously opposing views, perhaps depending on the circumstance.

The context of the debate about ministerial responsibility that we are having today has essentially, I guess, been driven by certainly the questions that have been asked today of the Minister for Education, Youth and Family Services in relation to the non-reporting by the department of education under section 162 of the Children and Young People Act. So we need to put this debate in context. We need to put the debate in the context of the minister's responsibilities in relation to this particular issue. We need then some explanation of what section 162 says, how it should be interpreted, what it means and where it vests or imposes responsibility.

As we all know as parliamentarians and as legislators, the great importance of a second reading speech in relation to any legislation is that it is a document to which courts will give judicial notice in interpreting legislation. It is regarded as one of the principles of extrinsic evidence. So we go to the second reading speech when we want a detailed explanation or finer understanding of what particular sections in a particular piece of legislation mean in terms of that finer interpretation.

The second reading speech on the Children and Young People Act was presented by Mr Smyth, then a minister in the previous government, on 1 July 1999. This was Mr Smyth's description of the import of section 162:

> To maximise the opportunities for government to give best support to children and young people, the Bill shifts principal responsibility for children's and young people's matters from the office of the Director of Family Services to the more senior office of departmental chief executive.

Mr Smyth goes on:

> In this way the chief executive will have overarching responsibility, and with it, accountability to the community and this Assembly, for child protection, child care licensing and youth justice services under the Bill.

Mr Smyth concludes:

> This is seen as a way to maximise possibilities for seamless service-provision for all people under 18.

They were the terms in which Mr Smyth introduced this piece of legislation, in which he said the purpose of this section is to ensure that the chief executive of the department has full accountability and responsibility for its administration. We thank Mr Smyth for that particular piece of extrinsic evidence that we would rely on in relation to an interpretation of this piece of legislation.

But over and above that, of course, the issue of ministerial responsibility is something which we have long debated and which we have tended perhaps not to agree on in the past. The last significant debate in the Assembly on ministerial responsibility was, of course, in 1999 in relation to a no-confidence motion on the matter of the Bruce Stadium—a no-conference motion which, I hasten to add, was not successful. I say it was not successful essentially to put in context the description or the discussion of the issue around ministerial responsibility which was contained in the Auditor-General's report No 2 of 2001 entitled "Enhancing professionalism and accountability". I think this is the last word on ministerial responsibility we have had in a formal published sense in the ACT.

Certainly, the last serious debate in this Assembly on ministerial responsibility was in 1999. On that occasion the debate was on a motion moved by me, which was unsuccessful. The then government prevailed in the position it put, the arguments it made and its explanation and description of ministerial responsibility. So that is the last and final word that this Assembly has on the matter. It was reported on by the Auditor-General, as I say, in report No 2 of 2001. The Auditor-General said:

> The most serious sanction for a Minister is that the Minister may be required to resign or be dismissed. This would normally occur as the result of a no confidence motion.

He went on to describe the debate. In that debate the then Chief Minister said she disagreed with the prospect that the Chief Minister had to resign if there was a systemic problem anywhere in the public service that the Chief Minister did not know about. That was, as I say, the position that prevailed on the day. It is the last word on ministerial responsibility in the Legislative Assembly. This last published word on ministerial responsibility can be found in the debate on a motion which I had moved. I was not successful in having that motion accepted—you prevailed and this is your position. This is the position the Assembly adopted in 1999 on the basis of the arguments you presented. This was the principal argument presented by you on that case on that occasion.

I shall quote Mrs Carnell, your leader at the time, who led the debate for you and, as I say, was successful in putting this position. Mrs Carnell said:

> The bases of ministerial responsibility are quite clear. If a Minister defrauds the system in any way…the Minister goes; no doubt. If a Minister ignores advice…the Minister should be out. But if problems occur at the administrative levels of the Public Service that the Minister knows nothing about, any view that the Minister should then resign or be sacked is patently ridiculous.

Mr Smyth: It's not what you said.

MR STANHOPE: That was the position you put and that is the position that prevailed. You convinced the Assembly and the Assembly supported you on this position. As I say, in terms of ministerial responsibility as understood in this Assembly, this is the last word put by you.

During that same debate, the then Attorney-General and Minister for Justice and Community Safety, Mr Humphries, supported the then Chief Minister's position. He said:

> …ministerial responsibility has never been that a minister must resign when a mistake is made by his department, no matter that that mistake might have very serious consequences.

That is the position that the then Attorney-General—the one before Mr Stefaniak—put. In taking this view, the then Attorney-General, Gary Humphries quoted—it may be the same passage, coincidentally, that Mr Smyth just quoted; perhaps not—a passage from *House of Representatives Practice.* This was Mr Humphries's view, and he quoted it at the time with approval:

> The evidence tends to suggest rather that while ministers continue to be held accountable to Parliament in the sense of being obliged to answer to it when Parliament so demands, and to indicate corrective action if that is called for, they themselves are not held culpable—and in consequence bound to resign or suffer dismissal—unless the action which stands condemned was theirs, or taken on their direction, or was action with which they ought obviously to have been concerned.

Mr Stefaniak, the then Minister for Education, also spoke during the debate for the Liberal Party, the then government, in relation to this issue. He had this to say:

> At no time in the past 10 years has a Minister had to resign because of the actions of departmental staff.

This is Mr Stefaniak's view of ministerial responsibility. We have had Mrs Carnell's view, we have had Mr Humphries' view and now we have Mr Stefaniak's view. This is Mr Stefaniak's view:

> It has been when Ministers have acted improperly or have misled the Assembly that Ministers have been forced to resign or governments have fallen.

The Auditor-General gave quite an analysis of all of this. But we see, of course, what the position on ministerial responsibility is in relation to this place, as put by the Liberal Party. As I say, this was the last major debate on ministerial responsibility. They were the arguments of the then government. Those arguments prevailed and, on the basis of the strength of the arguments that you made, the motion was not carried. So we highlight your humbug and your hypocrisy here today in relation to these issues. In any event, you completely misunderstand any of the accepted notions of ministerial responsibility or Westminster accountability. You misunderstand them, you misquote them and you misuse them.

In respect of the matter of public importance proposed by the Leader of the Opposition, issues around ministerial accountability and responsibility in the ACT perhaps are best explained in the context of the position of the Prime Minister. I would have thought that a better example of how we should seek to understand the importance of issues around ministerial responsibility is a Prime Minister who blatantly misleads the nation around the reasons for going to war in Iraq, a Prime Minister who concocts some cock and bull story about weapons of mass destruction as a pretext for invasion which costs the lives of 40,000 or 50,000 people on the basis of so-called intelligence that does not exist in pursuit of weapons of mass destruction that never existed. In those circumstances, the Prime Minister had a real obligation to tell the truth.

Of course, the issues around ministerial responsibility go to those essential issues of honesty and integrity—the need to tell the truth, the need not to mislead and the need as a minister to act always with integrity, with propriety and particularly with honesty. Those are the tenets that underpin the doctrine of ministerial responsibility and the need for full and true accountability in relation to the actions of ministers—not some fanciful, moving notion in Mr Smyth's second reading speech of whether or not a particular officer has been charged with a statutory responsibility.

This statutory responsibility was explained in detail in the second reading speech made by Mr Smyth. The provision was deliberately inserted into the legislation by the then government to ensure that the chief executive of the department was the person who was to have, in the words of Mr Smyth, "overarching responsibility" and, with it, full accountability to the community and full accountability to the Assembly for the administration of our legislation in relation to child protection, child care, licensing and youth justice under that particular bill.

Mr Smyth in fact says it all. Mr Smyth said to the Assembly, the people of Canberra and those that interpret this particular legislation, "We are introducing this legislation with this particular provision in it to ensure that the interests of children are best represented, and they are best represented through this legislative and administrative structure and arrangements we are putting in place which impose on the chief executive of the department full statutory responsibility and, through that statutory responsibility, full accountability to the Assembly and full accountability to the people of Canberra for the protection of children." The previous government proposed that that was the best way to ensure that issues in relation to child protection were best managed and best dealt with in this community. This was the legislation that the previous government put in place.

As we know, the then minister who initially administered and implemented that legislation was, of course, Mr Stefaniak. It fell to Mr Stefaniak. The minister charged with responsibility for putting in place the mechanisms to ensure that that legislation was appropriately administered was Mr Stefaniak, and it never happened. We now know that from the day the act came into play, the day the act was implemented—which I think was May 2000, when Mr Stefaniak was minister—these particular systems were not put in place, and that is a pity. At no stage subsequent to that were they put in place. As we know, Mr Stefaniak administered that legislation for the next 18 months or so.

I think every person who has been a member of this place since then needs to accept—it is a matter of enormous regret; something we all regret—that unfortunately none of us

throughout our involvement in various committees, such as estimates committees and committees convened to look at annual reports, acknowledged or accepted the significance of this particular omission. Not a single one of us.

MR STEFANIAK (4.24): Actually, I think it might have been seven months, Jon. I will check that. It was very interesting to listen to Mr Stanhope. He said much about the debate in 1999 and the comments of then government ministers about responsibility, but said very little about what he has said in the past. Indeed, he has said very little to give us any idea of what he thinks should be a code of conduct for ministers. In fact, he has not produced a code of conduct as yet and the cabinet handbook makes no mention of his standards for individual ministerial conduct.

Mr Stanhope revealed in response to a question from, I think, Mr Cornwell that he had not had any conversations with his ministers or advised them of the standards that he expects from them. I think that shows a failure of leadership. He did advise Mrs Burke in an answer to a question without notice that he had told caucus, “Now listen you bastards, don’t stuff up.” I do not know if anyone can call that leadership. It is fair to say that, in government, setting standards for ministerial conduct certainly has not been one of his priorities. Indeed, it seems it probably does not even rate. He has not even set up a committee or spent hundreds of thousands of dollars to hire consultants to look into the issue or tell him what to say.

During his Labor leader’s address on 14 March 2001 when in opposition, Mr Stanhope promised that after 1999 an ACT Labor government would strenuously apply a rigorous code of conduct for its ministers. That would seem to be another broken promise. I hope he meant something a little bit more rigorous than “Don’t stuff up you bastards”.

Just over five years ago, in support of a motion of no confidence in Mrs Carnell over the hospital implosion, Mr Stanhope said:

> …in evidence to the VITAB board of inquiry, the Chief Minister argued that ministerial accountability is absolute...That was said in sworn evidence. Pressed by the chair of the inquiry, Professor Dennis Pearce, about whether there were differences between government departments and statutory authorities, the Chief Minister said:
>
> > I suppose there are some differences, that the whole purpose of having statutory authorities does give them somewhat more flexibility than is the case in a department, but at the end of the day the minister is responsible...

Mr Stanhope then referred to the code of conduct which the previous government quickly developed and implemented. I quote:

> The Chief Minister’s view was reinforced shortly after she took government in 1995. In April of that year the Chief Minister released a “tough new code of conduct for Ministers”, one that would form a “key part of the Liberals’ commitment to open government”.

Mr Stanhope went on to say:

> "Ministers," said Mrs Carnell, "must accept standards of conduct which are different from those applying to others having office in the Assembly or the wider community". Whilst the code of conduct dealt with primarily, as perhaps benefits a document emanating from a Liberal government, with issues concerning interests with private companies and businesses, it has this to say about the principle of accountability:
>
>> All ministers will recognise that full and true disclosure and accountability to the Parliament are the cornerstones of the Westminster system which at the present time is the basis for government in the ACT...Ministerial responsibility also requires…the individual responsibility of ministers to the Assembly for the administration of their departments and agencies.
>
> This is the Chief Minister's definition:
>
>> Ministerial responsibility…requires…the individual responsibility of ministers to the Assembly for the administration of their departments and agencies.
>
> This is the Chief Minister's code of conduct.

That was a code of conduct that Mr Stanhope advocated in government and, indeed, promised that he would strengthen in government. However, he sat on this hands for two years and, when faced with the test of setting standards for his ministers, he has actually squibbed it.

Mr Stanhope continued:

> What commitment has the Chief Minister to her stated views about the importance of ministerial responsibility?

The voters of the ACT might well ask what commitment this Chief Minister has to the importance of ministerial responsibility. Mr Stanhope continued:

> Does she still believe…that Ministers are required to accept higher standards than other members or those prevailing in the community. Does she still accept that the bar is set higher for ministers and that she, as Chief Minister, has an even more pressing obligation? We are entitled to ask these questions on behalf of the community and the community is entitled to an unequivocal answer, just as it is entitled to anticipate that the answer will be yes.

The now Chief Minister, Mr Stanhope, in the debate on the hospital implosion nominated proximity as a key factor in deciding whether a minister had responsibility. He stated in that debate in relation to the question of proximity:

> Mr Humphries asked what was our test of the standard of ministerial responsibility. And the clearest answer is, of course, proximity. In the cases Mr Stefaniak raised, deaths at Quamby and the remand centre, the Ministers involved were well removed from the incidents. The public servants involved were well down the chain. We all know this. We know the difference. But in the case of the Chief Minister in relation to the implosion, the proximity is stark. We are talking about the head of the Chief Minister's Department. We are talking about senior executives in her department,

> with direct access to the Chief Minister. We are talking about the Chief Minister's media adviser; her personal staff; the staff in her office.

Presumably, Mr Speaker, that means that ministers have an implied responsibility when major chief executives and other senior people in their department make significant errors. Mr Stanhope continued:

> Mr Speaker, the Chief Minister has relied heavily for her defence on an interpretation of the notion of ministerial responsibility that neither she nor her Ministers could be held to account for the administrative failings of departments or agencies under their control. Yet, and as I said this morning, the Chief Minister's own code for conduct for Ministers sets the standard she is bound to respect. According to the code, ministerial responsibility requires the individual responsibility of Ministers to the Assembly for the administration of their departments and agencies. That is the standard. That is where the bar is set.

He continued:

> There is a responsibility that can be applied here. In that matrix the Public Service is responsible to the Minister; the Minister is responsible to the parliament; and the parliament is responsible to the people. The test that arises from the matrix is, as I have mentioned, proximity.

Mr Stanhope, as I said, has not developed a code of conduct for his ministers. Indeed, some of his statements—such as, "Now listen you bastards, don't stuff up"—show that he holds a rather contemptuous view of the need for ministerial standards.

In the past couple of years we have seen this government display a contemptuous response towards Westminster standards and ethical standards generally. We have had the Auditor-General point to a possible breach of the law in regard to the $10 million Treasurer's Advance by Ministers Quinlan and Wood. We have seen Mr Corbell found to have been in contempt of the Assembly, which would have seen him forced to resign if the government was serious about standards.

We have seen the CEO of Actew, Michael Costello, write a blatantly party political column for the *Australian*, which again is in clear breach of the Westminster system's ideal of a non-partisan public service offering frank and fearless advice to the government of the day. We have had the Department of Education, Youth and Family Services breaking the law, despite the minister having had clear warnings for several months from the relevant Assembly committee and the Community Advocate. And we have had members of Mr Corbell's department found to have committed contempt of the Assembly over briefing notes they provided for senior executives preparing for estimates. Yet the Chief Minister fails to act.

It is clear that this Chief Minister is not prepared to comply with the ministerial standards that he advocated and advocated very strongly, as I have quoted, in opposition. There is a clear inconsistency in the standards he advocated in opposition and the standards that he has now adopted. It is time for this Assembly to insist that he takes the Westminster principle of individual ministerial responsibility seriously.

MS TUCKER (4.34): I wish to speak briefly in this important debate. The whole question of ministerial responsibility has come up before in this place. In fact, I was just

reading *Hansard* in terms of what I have said in the past, but I will not go into that in too much detail at the moment. From what I am hearing around the corridors, I will probably have an opportunity to do so later this week.

The really interesting thing for me that is coming out of this conversation today and the event that it is related to is that when you look at the question of ministerial responsibility and whether responsibility is being taken you find that it gets down to questions about intent. For example, when we were looking at the situation concerning Mrs Carnell's handling of the hospital implosion, lots of factors influenced my decision that responsibility had not been taken. I listed them in *Hansard*. There was a series of events which showed to me that there had been a certain disregard and recklessness in how the then Chief Minister had handled the implosion.

When I look at this event I can see some real differences. In a way, I see Ms Gallagher as the fall guy in that it is being suggested that she has to take absolute responsibility for this event, but if you look into the history of the matter you will see that the accusation of ministerial incompetence or lack of responsibility applies equally to Bill Stefaniak, Gary Humphries in terms of the Community Advocate's office, Simon Corbell, probably the current Chief Minister and Ms Gallagher if we are talking about the statutory requirement not being met.

Let's look at what has happened here in context. Let's also look at the responsibility of the whole Assembly and the performance of the whole Assembly—I include myself in that—in terms of the responsibility that was taken or not taken. Every single person in this place had an opportunity to make strong statements about the failure that we are talking about now, but it was the minister herself who made the strong statements.

Mr Smyth says that Mr Cornwell was on to it and he was right in asking questions on notice. Mr Cornwell's questions on notice were related to mandated persons and the sharp end of the issue with respect to the death of a child. His questions on notice were not about the particular issue that is now being discussed, that is, the failure to accept ministerial responsibility.

We have not seen evidence from the opposition that they took notice of this matter and made statements on it, apart from the scandalous things Mrs Burke is now saying on radio, which I imagine she will have to withdraw. As a mandated person, I guess that she will need to report and give details to the police on what she has been saying. Mrs Burke is telling the Canberra community on radio that she knows children are being abused in care, yet she has not contacted any of the people who actually take an interest in that. I am a bit worried about that. I guess she was not really thinking when she was speaking. Maybe she has made a very serious mistake. Another really interesting issue here is that—

Mrs Burke: They have been advised to go to the authorities and have gone and got no results.

MS TUCKER: Maybe Mrs Burke will seek leave to speak to explain her statements on radio and talk to the police. We would all be feeling much better for it.

The issue of responsibility in this Assembly on this subject is very interesting. I remember clearly that I wanted to debate the government response immediately after it was tabled because I was so concerned, but no-one on the opposition side of the house said, "Yes, this matters. My God, look at what the government has said; it's not good enough." No, that was not said by the opposition or the cross bench and I was not allowed to debate the response. It was the minister who finally said, "My God, we have a problem." She is the person who took responsibility, not anyone else in this Assembly. Now, in hindsight, we have the opposition baying for blood, even though they were equally culpable in government and now in opposition for failing to take any real notice of the issue. So I think that this whole debate is extremely interesting.

I will say on the general question of ministerial responsibility, whether you look at Kate Carnell on the implosion or Bruce Stadium or at John Howard on the asylum seekers or the children overboard the key difference between how this minister has responded and how they responded is that they were denying it, they were covering up, they were not prepared to acknowledge that there had been a stuff-up. They failed to take responsibility at any point of the process. But Ms Gallagher, whilst she has acknowledged that she failed in her responsibilities, has taken responsibility on her own for what has happened.

When you look at these questions of ministerial responsibility, which are, I agree, extremely important in the Westminster system, you should look at them in context. You should look at them in terms of whether that irresponsibility was a result of recklessness and negligence, whether there was an admission, whether there was an attempt to cover up. All those aspects are extremely important.

I think it is very easy and simplistic to say that there was a breach of ministerial responsibility, that responsibility was not taken and therefore the minister has to fall on his or her sword, that we should forget the rest of the story, should not look at the whole story, and just focus on that issue. I think that it is quite dangerous and does not assist to do that. I am not saying that Ms Gallagher, having taken responsibility in the way that she has, does not deserve to pay for some of the consequences of that; but I would say, as someone who has taken an interest in this issue over a long time, that I am seeing for the first time a minister who is actually taking responsibility in a way that might lead to an improvement in the situation.

MS DUNDAS (4.41): With a little bit of misguided faith, I thought that today we would be having a debate about ministerial responsibility as a matter of public importance. I think that the responsibility of ministers and of members to this Assembly and to the community is one of great public importance. We seem to have gone off track and started to debate a very important issue relating to the Children's Services portfolio. We have already had a lot of discussion about that today, so I want to look at the broader issue of ministerial responsibility.

Ministerial responsibility is an issue that, obviously, is very important. It is something that the Democrats take very seriously. We have concerns about the relationships of members of parliament, ministers in particular, with their staff—not just in their offices, but within other areas, such as their departments. In the federal arena we are looking at how to codify a very important role staff play in decision making, which is something that the minister touched on in earlier discussions today when she said that she had a

responsibility to read the report of the Community Services and Social Equity Committee of the Assembly and her staff were also reading the report, as were the departments.

Even this Assembly is looking at the role of everybody in this building—of volunteers, of members and their responsibilities and how those responsibilities are put forth. I think we need to have an atmosphere in which departments can provide frank and fearless advice and know that that advice will be acted upon in the right way, where Assembly committees and members of this parliament can ask questions of ministers and departments and get truthful answers, and not have to ask whether everybody is meeting their statutory requirements.

I think we all have a responsibility. In fact, it is part of the oath that we take when we stand for this place to uphold the law and to respect the law. I have been with many of you at various Australia Day ceremonies at which we have talked about Australian law, the oath of citizenship and the responsibility that we have to this place. I think that this debate today has gone off the track a bit. We are talking about who read which report, when they read it, what they were doing at the time and who said what on radio, when really we need to come back to the fundamental issue of what that responsibility means, to whom we are responsible, why we are responsible and how we can set up an environment in which this responsibility is second nature and is not one that we always have to question.

Having governments and oppositions which continue to swap sides on issues and which continue to try to put political point scoring issues above the actual issues that are being dealt with does not build that community faith and does not build an atmosphere where things can move forward. Ministerial responsibility is a fundamental part of the Westminster parliamentary system, but we have had instances where ministers were responsible for their department's actions to a point which was almost ludicrous. The colour TV incident of 50-odd years ago is one that springs to mind.

But we have seen it go the other way. Ms Tucker has already alluded to the children overboard saga whereby ministers stepped away from every single action that their departments had taken. I think we need to look at how ministers enact their responsibility, how they work with their departments and how we, as the Assembly, work with the ministers and the departments to bring about the best outcome for the entire community.

The debate around particular issues relating to children's services and responsibility for them will continue. I do not think that this will be the last that we will hear about that. I think that we do need to focus on the core issues and not continue to try to throw mud across the chamber in an attempt to make ourselves feel better in terms of politics.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (4.46): I want to acknowledge a positive contribution to this debate by Mrs Dunne and Mr Smyth. They made it this morning rather than this afternoon. Mrs Dunne did discuss the many roles that she had to carry. Of course, that situation is compounded when it comes to being a minister. There is a need for us, to some extent, to get a grip. I will not go into the technicalities of

ministerial responsibility in a Westminster system. I will defer to the Chief Minister and confess of minimalist knowledge—a perception but not a knowledge of the detail.

Further, I want to acknowledge the contribution of Mr Smyth, who pointed out that on many occasions we come here and play politics. Of course, this MPI has not been brought forward today out of some high-minded concern that, say, Ms Dundas might have about ministerial responsibility; it is just coincidental with a political situation which the opposition would want to exploit, quite naturally. I do think that both of those contributions today do put that in perspective.

Mrs Dunne has the experience of having worked in a minister's office. Mr Humphries was not known as a great decision maker—"Gary the Uncertain". He was known for decision avoidance. But he was good on the Assembly floor. He was good at building up the straw man and he was good at verballing. Nevertheless, he was here; he played the politics.

I jar a little bit, to use a lesser word than "resent", at the introduction from time to time in these debates of references to Mrs Carnell, because the series of incidents involving the Bruce Stadium redevelopment are in a whole different class from some of the other matters that we have discussed here and I think that, again, we should get a grip and make sure of that when we talk about what a minister might know and might be expected to know versus other issues that involved Bruce Stadium.

I want to relate just a couple of incidents that occurred today, quite coincidentally. The first was that, when I arrived at the Assembly today, the Chief Minister arrived at the same time. He opened the boot of his car and he had a briefcase and a suitcase, a quite substantial suitcase, in it. I said, "Where are you off to?" He said, "No, that's full of files." In fact, that is a commentary on the workload that flows—

Mr Smyth: Haven't you seen the files on your desk?

MR QUINLAN: Look at the desk here. The second incident was when Mr Wood came down here this morning with, as is his wont normally, a stack of files at least a foot and a half deep. That, again, represents the workload.

Mr Smyth: Ah, the workload did it!

MR QUINLAN: I think that the workload over here is conducted a little differently from how it was in a Carnell government, Mr Smyth, where I have before described you as a junior minister. The cabinet, as I recall, was Carnell, Walker and Lilley, and probably just as well. That absolves you guys, because you and Mr Stefaniak were in that cabinet room when some of the decisions in relation to Bruce Stadium were taken. But I do not think you can be held responsible for them on two grounds: firstly, Bruce Stadium was Mrs Carnell's direct responsibility and, secondly, you were not involved.

I do thank Mrs Dunne for her contribution in recognising the workload and I just want to extend that recognition to what a minister does in the place. As I said, if, once in a while, we could just get a grip on how we can operate practically. Of course you want to make politics of it, no more so than Mrs Burke. I do not regularly listen to 2CC, but I have read the transcript and, if what is said in that transcript has been said, it is very serious. I am

assuming that we will hear a lot more of Mrs Burke, because I understand that we all do have a mandated responsibility, as politicians, to report what we know. She, obviously, knows of particular cases and I would expect that they would be reported to the police with particulars.

Mrs Burke: They have already done so. They are already going through the system that is failing them.

MR QUINLAN: I would certainly hope that the level of report that is made and the gravity of the claims that you have reported to the police do, in fact, match what has been said on that radio program. Talking about responsibility, we have here an unfortunate incident that has not at this stage, as I understand it, in any way exacerbated the problems of an individual child; it is just a case of non-reporting, there has been non-compliance.

Mr Cornwell: We don't know that yet, Mr Quinlan.

MR QUINLAN: No, we don't, and we ought to follow that through and make sure of the facts. I expect Mrs Burke to be now a star witness in that. It is important, I think, for this place to keep a perspective. We are now dealing on the edges of very serious issues. As I said, I accept that politics will be played; I agree with Mr Smyth. I think I can say that I have not been one to play them to the extent of others in the joint, but I expect that. But let's actually maintain a perspective and make sure that we keep a grip on ourselves in terms of what is said in relation to it because there may be a greater fallout from that than the incident itself, which is being addressed. The incident relates to a problem that has existed for some time. It predates this government. It certainly predates Ms Gallagher's elevation to the ministry. Nevertheless, because it is politics, you pick the target.

You have given it your best shot. The problem existed before this government took office. You are involved, we are involved and the administration is involved. Let's now take a sensible, rational, positive approach to redressing the problem. Let's keep it factual. Let's make sure that we do adhere to our responsibilities and remember what is the end objective.

MRS BURKE (4.55): I do not need to cover a whole lot of the ground, and we have certainly veered of track. Ministerial responsibility in the ACT is a very important matter to me. We have been entrusted with a position of trust in this place and the public deserve and expect a high level of accountability.

I think that it behoves us all to sit up and take note. There has been some good input to the debate from Ms Dundas. Ministerial responsibility is about relationships with departments, with staffers and with others, and we need to look at our roles more closer than ever before. Why are we here, who are we responsible to and where does the buck ultimately stop?

It is not about ducking for cover behind people; it is about us facing up to our ministerial responsibilities. As we are entrusted with running this city, we should not treat the community out there with contempt. We should show and lead the way in our conduct in this place.

MR SPEAKER: The discussion is concluded.

Legal Affairs—Standing Committee
Report 9

MR STEFANIAK (4.57): Mr Speaker, I present the following report:

> Legal Affairs—Standing Committee—Report 9—*Annual and financial reports of the Department of Justice and Community Safety and related agencies*, dated February 2004, together with a copy of the extracts of the relevant minutes of proceedings.

I seek leave to move a motion authorising the report for publication.

Leave granted.

MR STEFANIAK: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

MR STEFANIAK: I move:

> That the report be noted.

I will be very brief in speaking to this motion, given the amount of work that we have to do today. People can read for themselves the various recommendations that have been made in relation to this report. I think we made six or seven recommendations. I will just speak to some of the matters in the report.

We made a number of comments which are worth noting. For example, there is a need for a proper break-up of the output for policy advice. That has been an ongoing issue for a number of years. I recall it cropping up first in about 1999 and it still has not been rectified.

Some concerns were raised in relation to bushfires and the plans that were going to be implemented this year. I think that there were some less than satisfactory answers given in relation to the session on that before Christmas. I note that we have made a recommendation in relation to that.

We still have some problems in relation to the statistical information coming from some of the courts. I commend the Magistrates Court for the information coming out of there. It is quite detailed and gives a very good indication of what is actually occurring there. Of course, that court handles a vast majority of the matters before the court system in the ACT.

I was disappointed and somewhat amazed to hear that we still cannot get full information from the Supreme Court, a court that handles a miniscule percentage of matters compared with the Magistrates Court.

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: For example, we had a very detailed breakdown for the Magistrates Court of how many matters were part heard, how many matters had been adjourned till the following year, how many convictions there had been and how many civil matters had been finalised, but it was still difficult to get that amount of information for the Supreme Court.

I note that improvements have been made, but I certainly hope that that situation will be rectified by the next time we look at the annual reports, because that issue was raised by the then Leader of the Opposition when he was shadow Attorney-General and it continues to be a problem. I certainly commend that to him.

When we dealt with the matters finalised by the Supreme Court in the criminal jurisdiction—I do not think we had full information in relation to the civil ones—we did find out that 97 matters had been finalised. Unfortunately, only 38 per cent of those defendants—37 of them—were actually sentenced to a term of imprisonment. It may even have been weekend detention or periodic detention. We could not get a break-up on that and I am still waiting for those figures.

It was disturbing that the most serious offence in the ACT was shown as “other”, of which eight people were convicted and five people were sentenced to imprisonment, home detention or periodic detention, but we still do not know what “other” actually means. That just indicates the statistical problems with data coming from that court. I certainly hope that we will not have those problems next year, but that situation has been ongoing.

We made a recommendation in relation to the need for secure mental health facilities. There have been some problems there, as expressed by the Director of Public Prosecutions in his report. I will be brief in referring to that report. I raised a disturbing issue in relation to page 1 of the report. I note that the attorney indicated that he and the director would talk about it and they might look at the need for some legislation. I certainly hope that they will.

The issue related to a complaint some years ago by former Chief Justice Geoffrey Miles that defendants who breached recognisance were not prosecuted for the breaches and brought back to court—for example, someone who was sentenced to, say, two years imprisonment and whose sentence was suspended on entering into a bond to be of good behaviour for 12 months and who went out and committed another offence and was not brought back for a breach of the recognisance. The Director of Public Prosecutions said in his report:

> With the support and assistance of the Registrar of the Supreme Court, Mrs Jill Circosta, and Corrective Services, my prosecutors put additional effort into ensuring that this occurred. An analysis of breached prosecutions in the last year—

the year of this report—

> has revealed, however, that in 67 per cent of cases, no action was taken on prosecuted breaches. Quite apart from disinhibiting the prosecution of breaches, this approach tends to devalue the importance of court orders and recognisances and sends the message that compliance with them is optional.

He said that there had been about 15 breaches and only about five had resulted in anything being done. That is very depressing for the police and the prosecutor involved. Effectively, it is almost a waste of time if nothing happens. It is disturbing. The director raised that in his report and it is certainly something that the government needs to take on board. It is essential that people have confidence in our system. If someone has committed a breach of their recognisance—it is a very serious matter when a court imposes a sentence; it is meant to be—I would think that there would have to be exceptional circumstances for no action to be taken upon that breach. In fact, the expected thing is for the sentence then to be served.

In the example I gave of a two-year sentence being suspended, the person concerned should serve the two-year sentence unless there are exceptional circumstances, otherwise that person is making a mockery of the situation. I think that the director was quite right in bringing forward that problem. I certainly hope that we will not see that again. A number of other issues arose out of the report of the Director of Public Prosecutions, which I think we all felt was a pretty good report.

The only other issue I want to highlight concerns the victims of crime support program. The Victims of Crime Coordinator stated on pages 8 and 9 of her report that she had made submissions in relation to the proposed ACT bill of rights and was concerned to see that the rights of victims and the recognition of a citizen's right to safety and security were not mentioned. I do not think that the Chief Minister has indicated that he intends to make any amendments there. Certainly, there are lots of other rights there.

There is a whole plethora of sections in the bill before the Assembly which deal with the rights of persons charged with offences, et cetera, but there is nothing about the actual rights of victims, a right which appears, as the Victims of Crime Coordinator indicated, in a number of UN conventions, the Rome Statute and European Court of Human Rights rulings. That is a glaring omission from the Chief Minister's bill of rights and that was a very interesting revelation. I note that when we have that debate the opposition will be trying to do something to rectify that situation if the government does not.

Having made those points in relation to this report, I thank my colleagues for their assistance and diligence, as well as the committee's hard-working secretary and other Assembly staff.

Question resolved in the affirmative

Legal Affairs—Standing Committee
Scrutiny Report 42

MR STEFANIAK: I present the following report:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 42, dated 15 January 2004, together with the relevant minutes of proceedings.

I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Scrutiny Report 42 contains the committee's comments on one bill, 10 pieces of subordinate legislation and two government responses. The report was circulated to members when the Assembly was not sitting. I commend the report to the Assembly.

Legal Affairs—Standing Committee
Scrutiny Report 43

MR STEFANIAK: I present the following report:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 42, dated 15 January 2004, together with the relevant minutes of proceedings.

I seek leave to move a motion authorising this report for publication.

Leave granted.

MR STEFANIAK: I move:

> That the report be authorised for publication.

Question resolved in the affirmative.

MR STEFANIAK: I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Scrutiny Report 43 contains the committee's comments on six bills and five government responses and I commend it to the Assembly.

Planning and Environment—Standing Committee
Report 24

MRS DUNNE (5.06): I present the following report:

> Planning and Environment—Standing Committee—Report 24—*Inquiry into the Road Transport (Public Passenger Services) Amendment Bill 2003*, dated December 2003.

I move:

> That the report be noted.

Mr Deputy Speaker, this report, concluded in December 2003, was given permission for publication and circulated out of session. This is an important landmark because it relates to the livelihoods of a number of people in business in the ACT and has direct impacts upon our strategy for public transport within the ACT.

The terms of reference for the committee inquiry were fairly wide ranging. They related in the first instance to a review of the Road Transport (Public Passenger Services) Amendment Bill. On 17 June 2003 it was referred to the Standing Committee on Planning and Environment to undertake an analysis of the bill in the context of the draft sustainable transport strategy, having regard to the role of taxis, hire cars and other small passenger vehicles in the sustainable transport strategy; the appropriate licensing and accreditation strategies to support that role; and any transitional arrangements, such as compensation, that should accompany any recommended changes to industry regulation. It was to investigate community service requirements, including disability access and the adequacy of services to parents of children under two. A substantial part of the committee's inquiry and report relates to the road transport legislation, which is about the regulation or not of the hire car industry and the taxi industry.

When the minister announced his intention to table this bill and put it through, he said that deregulation was dead. I said at the time that deregulation would never be dead on this issue until we had done something about it. It is the view of this committee, as seen in its recommendations, that the government's approach as proposed in the legislation is a flawed one and will not meet the needs of the people in the industry, or consumers, in the future and will not address issues of sustainability in transport.

As a result of that the committee has recommended that the government implement a buyback scheme for both hire car licence plates and taxi licence plates. We have also made recommendations about how that might be done. It could be done as an all-in-together, privately financed proposal, as has been partially adopted in Western Australia. In the case of the hire car industry, because the number of cars and the value of the licences are such, it could be done on budget for less than $3 million.

In addition to those—the most salient—recommendations, we have also made recommendations in relation to sustainable transport and the interaction between the taxi and hire car industry and the rest of the public transport industry. We have made recommendations in relation to the wheelchair-accessible taxis and where they might be best placed. We have recommended that they be removed from the administration of the taxi cooperative and be taken over by ACTION so that they can be used for their primary purpose, which is to meet the requirements of disabled people. The evidence before us, and the experience of most of the members of this place, is that disabled people often put in orders for wheelchair-accessible taxis that do not get met because the wheelchair

accessible-taxis are out doing business that is not their prime business. In addition, the wheelchair-accessible taxis could be used to take up the slack on underutilised and underused public transport routes out of hours.

We have also recommended that the government consider establishing another taxi radio network. We can do all that we can about deregulating the licences of taxis, but that does not do anything about freeing up people's entry into the cooperative—and the cooperative itself acts as a monopoly. We can solve the problem of licences, but we cannot do anything about the fact that the way the cooperative currently operates means that members of the public who want to enter the industry can be effectively excluded from doing so by not being able to become a member of the cooperative and have access to the radio network and the dispatching network.

We are also concerned about the costs. There are considerable costs associated with owning a licence, per se. In addition to those considerable costs, there are enormous costs associated with being a member of the cooperative and paying for the right to access the radio information, all of which drives up the cost of taxi fares and makes it a not very competitive part of the public transport network.

There are some difficult decisions for the government if it reads the report and considers the recommendations. As the Chair of the Planning and Environment Committee, I recommend that the responsible ministers read the report and put the lie to the Chief Minister's statement that ministers do not read reports. If the recommendations of the committee were to be taken seriously, as they should be—this is the third committee to have inquired into this, and it has come up with virtually the same recommendations; it is about time that government started taking notice of committees—we would see a much revised Road Transport (Public Passenger Services) Amendment Bill from this minister and the government when they do their response in less than three months time. I move:

> That the report be noted.

Question resolved in the affirmative.

Planning and Environment—Standing Committee
Report 25

MRS DUNNE (5.14): I present the following report:

> Planning and Environment—Standing Committee—Report 25—Draft Variation to the Territory Plan No. 217—Heritage Places Register—Whitley Houses Section 23 Blocks 6, 11 and 12 Griffith and Section 10 Block 4 Braddon, dated 7 January 2004, together with a copy of the extracts of the relevant minutes of proceedings.

I move:

> That the report be noted.

It seems almost superfluous to table this report. It was completed just after Christmas and published and circulated out of session, and the government responded before I got the opportunity to table the report. The committee was exceedingly concerned that we were

locking the gate when the horse had well and truly bolted, and what the minister did today was really securing the gate. The minister put out a press release before lunchtime today saying that the government was saving the Whitley houses.

The principal concern of the committee was that our time was being wasted. We sat down to consider whether or not the work of Cuthbert Whitley, which had been on the interim register for some time, was of sufficient merit to be placed on the heritage places register. Information fell into our lap—not through the normal channels. Someone came to see me to talk about something else and said, "By the way, I'd like to talk to you about what they're doing to the Cuthbert Whitley houses in Kingston."

So I went to have a look. Not only had there been approval for construction; they were also most of the way through it. The construction, which is probably now complete, totally overshadows and physically attaches itself to the existing house. We talk, in relation to the heritage register, about preserving the house, its setting and its curtilage. Before the Planning and Environment Committee could recommend one way or the other, the curtilage was entirely occupied by a three-storey block of flats.

The committee ended up deciding that it did not really matter whether we thought the architecture was worth preserving, because the heritage organisations had already approved development on and had a severe impact on these blocks of land, which were supposedly up for heritage preservation. We also understand that the three other Whitley houses on the list have similar-scale developments approved for them. So, although we have gone along and said that the Whitley houses are probably worth keeping, it has been a waste of time because development applications have already been approved that severely take away from the quality of the architecture, be it good or bad.

In many ways, it was a waste of the time of the committee, it was a waste of the time of the officials who dealt with it and it was certainly a waste of the time of the proponents and developers, who had to go through a rather cumbersome process. All of that is addressed in the committee's report. For the minister to come out today, prior to this report being tabled, and say, "We have saved the Whitely houses" reeks somewhat of hypocrisy.

Question resolved in the affirmative.

Planning and Environment—Standing Committee
Membership

MRS DUNNE (5.17): I seek leave to move a motion to alter the membership of the Standing Committee on Planning and Environment.

Leave granted.

MRS DUNNE: I move:

> That Mrs Dunne be discharged from attending the Standing Committee on Planning and Environment for that Committee's consideration of the inquiry into the building of an Aldi supermarket next to the Belconnen Markets.

This no longer needs explanation. It was canvassed at some length this morning as a result of some papers that were circulated at the Belconnen markets. It was drawn to my attention that there were concerns about the nature of it, and I agreed. To assure that there was no perception of bias in relation to this inquiry, I offered to the committee to stand aside, and that offer was taken up.

Since that time, although I am officially the chair of the committee, I have had no dealings with this, and this formalises that arrangement. Since the time the committee announced that I put out a press release and the committee wrote to members of the public about it, on 16 January, I think, I have had no involvement in this inquiry and will not for the rest of the time. I commend the motion to the Assembly.

Question resolved in the affirmative.

Gaming Machine Amendment Bill 2004

Mr Quinlan, by leave, presented the bill and its explanatory statement.

Title read by clerk.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (5.20): I move:

> That this bill be agreed to in principle.

The bill has three important elements. First, it reinstates the women in sport component of the government's plan for women policy to provide greater support for choices that women want to make in their lives.

As members would be aware, in June 2002 the Assembly passed legislation that enabled licensed clubs to claim $4 against their statutory community contributions requirement for every $3 donated for the benefit and enhancement of women's sport in the ACT. However, the government's initiative for the incentive scheme was amended during debate to provide a sunset clause of 30 June 2003. As part of the response to the review of the Gaming Machine Act, the government has agreed that, subject to the results of the scheme, the scheme will be made permanent under the act.

The ACT Gambling and Racing Commission's 2002-03 community contributions report shows an increase in actual donations to women's sport from $157,981 in 2001-02 to $219,692 in 2002-03. That is an increase of nearly 40 per cent in contributions by licensed clubs to women's sport in the last financial year. This result during the scheme's limited operation reinforces the government's position on this important initiative.

The bill presented today brings forward an amendment to the Gaming Machine Act to provide for the reintroduction of the incentive scheme for licensed clubs to contribute to women's sport. The proposal will enable clubs to access this scheme for the financial year 2003-04, and beyond, to address the imbalance in relation to women's sport and allow the benefits to once again flow back to women's sport. Secondly, this bill proposes to allow tavern owners in the ACT access to a more modern type of gaming machine.

As members would be aware, recommendation 27 of the Gambling and Racing Commission's review of the Gaming Machine Act provided for the gaming machine class distinction and its associated restrictions to be removed and for gaming machines to be accessed only by not-for-profit clubs. The government does not support this recommendation. While it has been agreed that class C gaming machines should still be available only to not-for-profit clubs, it is inequitable that taverns' only rights to gaming machines are to operate two class A machines when these machines simply do not exist any more. They are obsolete.

This proposal will enable taverns to have access to two class B gaming machines, in line with those types of machines allowed in some hotels, subject to the tavern owners meeting certain social impact assessment requirements. The social impact requirements form part of an overall strategy for harm minimisation and are applicable to all applicants for gaming machines. These measures are consistent with the code of practice for gambling operators and will significantly address the risks to minors and others in the community associated with the issue of gaming machine licences. This measure is also consistent with the government's policy of supporting and encouraging small business in the ACT and will reinstate the taverns' rights under legislation to access gaming machines of a type that is current and available.

Finally, it is proposed that the cap on the number of gaming machines in the ACT will again be set at 5,200 for a further 12 months to 30 June 2005. It would be inappropriate for the cap to expire and the restrictions on the number of gaming machines permitted to be relaxed at this time. I would have liked to bring forward a full package of reforms recommended and accepted by the commission and government at this time, but the workload of the parliamentary draftsmen precludes me doing so. It is necessary to bring forward these three elements, and the further legislation will be through as soon as is possible. I commend the Gaming Machine Amendment Bill 2004 to the Assembly.

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

Parentage Bill 2003

Debate resumed from 20 November 2003, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (5.25): Mr Deputy Speaker, the opposition will be opposing this piece of legislation. I can count on this Assembly that this legislation will succeed. Accordingly, we will be moving an amendment at that stage—more of that later.

This is a controversial bill, and it is somewhat sad that it has come before the Assembly. It is one in a raft of bills brought in by this government. Ones that were brought in previously do not pose much of a problem to anyone. The opposition was quite supportive of large portions of what the Chief Minister brought in and what was passed in 2002 and early 2003, with the exception of the taking out of any reference to the institution of marriage, which certainly caused the community and us a lot of concern.

This is a further development that has caused a lot of angst in our community. The government put out a paper and asked for community consultation, and it received 336 responses on a wide range of issues. It is interesting to look at the government's breakdown of how those responses panned out. In many instances there was a lot of support amongst our community for taking away unnecessary discrimination against certain classes of persons. But there was one area where close to 90 per cent of the persons responding opposed what the government was suggesting: same-sex adoption.

Three rallies have been held to protest the government's decision to go ahead, despite the obvious opposition of a significant proportion of people. When you are looking at 300 responses, 90 per cent is fairly indicative of the attitude in a community, and the government should certainly take that into account if it is serious about consultation and what the community actually expects. It is especially important considering that those persons and groups responding had very different views on some other aspects of what the government was seeking consultation on. That gives all the more force to the fact that nearly 90 per cent opposed this issue, which the government is now forcing through.

On 16 October, 1,600 people turned up in the rain, close to 1,000 turned up last Sunday, when it was 37 degrees—extremes of climate there—and a further 500 turned up just before Christmas to a rally that was called very quickly. This was one of the bigger demonstrations against a government proposal since self-government. I cannot recall many that were bigger than the one with 1,600.

For a government that prides itself on consulting, it has adopted a very arrogant attitude, forcing through a bill that goes against the views of so many people who contributed to a request by the government for community views on certain issues, and on this issue in particular. I find that very disturbing. The government is engaging in a form of social engineering, despite the very clearly stated views of so many people in the community.

Since the government decided to go ahead with this, members have been inundated with letters of concern from the public—and not the standard type of response organised by a community group to send to government, where you just put your name on and sign it. The ones I have been getting are very individual and from a wide range of persons. The vast majority of the ones in my office—over 90 per cent—are against it, so quite clearly the government is arrogantly pushing through this piece of legislation.

Mr Deputy Speaker, we in Canberra are a tolerant society, which has been proven by the responses to the government's inquiry paper and the fact that people have very different views on a wide range of things. But there are areas where the community draws a line in the sand, which the opposition draws as well in response to community feeling in relation to this issue.

The paramount concern in the adoption of children is the interests of the children. We are talking about children who will be put up for adoption and whom people will seek to adopt who have no real say in it, and the best interests of the child should be of paramount concern. Indeed, as I will mention later, the UN conventions on the rights of the child—the very things that Mr Stanhope and the Labor Party are so keen on and push in terms of human rights issues—indicate that the best interests of the child are paramount.

In the view of the opposition, the best interests of the child when it comes to adoption are served by having a mother and a father who will raise that child in a loving, caring relationship. People might say that some marriages are dreadful, some marriages break down and some heterosexual relationships are appalling. The debate is not about that. Children's interests are not served by being in that type of relationship. Conversely, people might say that some gay relationships are terribly promiscuous. The debate is not about arguments like that either. It is about the best interests of the child.

This is about looking at who are good people to adopt a child. I am not going to deal with negative things or relationships that break down. I am going to deal with what is in the best interests of the child if this bill gets up, as it appears it will, when a heterosexual couple seeks to adopt a child or a same-sex couple seeks to adopt a child, all of whom are good people.

There is a lot of evidence in relation to what is best for children in terms of adoption. It is interesting to look at how many people are adopted in Australia each year. The ABS statistics and those from the state government agencies show that the rate of adoption in each state or territory is extremely low. In Australia there were 9,789 adoption orders in 1971-72 and only 561 in 2001-02, of which 20 were in Tasmania and an estimated seven were in the ACT. In 2002-03 only two took place in Tasmania.

The paper prepared by the Australian Christian Lobby in August last year stated that the right of gay and lesbian couples to adopt children would place considerable pressure on an already low rate of adoption in each state and would also discriminate against heterosexual couples, who have the only naturally derived right to have children. There are very few of that type of adoption. There are other types of adoption; there are intercountry adoptions. Looking at the documents, I am not aware that any of those have been successful.

The Australian Christian Lobby states:

> It can similarly be argued that the move to allow gay and lesbian couples to adopt children is inconsistent with Australia's international convention obligations. This is because "the best interests of the child" is a principle that underpins and is explicit in the Hague Convention on the Protection of Children and Co-operation in respect of Inter Country Adoption. This is why, according to the international adoption section of DOCS NSW and private adoption agencies in WA, no inter-country adoption has ever taken place anywhere in the world to a gay or lesbian couple. This is despite the fact that countries like the Netherlands, UK and USA internally allow same sex couples to adopt children.
>
> In addressing the explicit intentions and ideological underpinnings of the Hague Convention the following are pertinent extracts from the Convention.
>
> Preamble
>
> The States signatory to the present Convention,
>
> Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding…

The ACL document goes on to state the various requirements for intercountry adoption and deals with a number of provisions specifically to address the illegal transboundary trade in children.

The issues are what is best for a particular child and the fact that, according to those stats from DOCS and also for Western Australia, there has not been a successful intercountry adoption in relation to same-sex couples. That indicates that the Chief Minister is leading same-sex people up the garden path, raising hopes that they will be successful in terms of this legislation. That is a very important issue indeed.

The Australian Christian Lobby states:

> In summary, the safe guards implicit within the Hague Convention are not evidenced in the ALP's eagerness to change the domestic adoption law. While the argument is sustained that some signatories allow same-sex couples to adopt under their own domestic law, it is conclusive that no same sex inter-country adoption has ever taken place between convention signatories and it doesn't appear that any inter-country adoption to a same-sex couple has taken place anywhere in the world. This raises the question as to whether the States and Territories proposals are in breach of the intent of the Hague Convention?

That certainly applies in this matter as well.

I now turn to certain obvious facts about what is best for the children. We say that, ideally, the best that can be done for children is for them to have a mother and a father. It has been said by a number of people in this debate that it is very difficult for two men to provide the role of a mother or for two women to provide the role of a father. That is simply difficult for human beings to do, no matter how well intentioned they are.

People will say, "Why shouldn't people who are same sex not have the right to adopt?" I have mentioned the best interests of the child. Bishop Brown, when the issue was first raised and the government first said they were going ahead, commented that 60-year-old couples who might be absolutely wonderful people are also precluded from adopting because they are too old. That is not in the best interests of the child. These things have to be taken into consideration.

It is not the rights of adults; it is the rights of the child and what is going to be best for that child. There are some other issues. Some of the persons supporting this bill indicate that it is necessary for legal reasons. For example, in a lesbian partnership where one partner is the natural mother of the child—the husband is never seen or whatever—the other partner, who might have to make decisions about medical or schooling matters if her partner is seriously ill, is not able to do it and therefore should be allowed to adopt.

A lot of people who oppose this legislation have indicated that those things can be got around by guardianship arrangements. What is wrong with that? There are lots of guardianship arrangements in the territory and throughout Australia that work very well. The argument that these people are not able to make the decisions they need to on behalf of their child does not bear much fruit when one looks at the fact that a guardianship

arrangement would suffice there. There is another group who might benefit most from this type of law—

Mr Stanhope: The children.

MR STEFANIAK: No. The children do not, Jon, and that is part of the problem. In the example of a lesbian relationship where there is a child, it is very hard to imagine that the absent parent would consent to an adoption. If a man runs off with another woman or another man, or if a woman leaves with another man or another woman, the partner who does not have custody of the child is very unlikely to give up their rights in relation to that child. This is not something we will see much of at all, and the Chief Minister is simply going down this path of, "Yes, it's social engineering." But a lot of people who might expect much from this legislation will find themselves disappointed because of the practicalities of it.

A number of articles have been written on this issue. I will read from one on the role that mothers and fathers play in bringing up children. It is an article by Dr Dailey, a senior fellow in culture studies at the Family Research Council, who earned his PhD at Marquette University. He refers to and quotes an American academic from New York, Mr Blankenhorn. Dr Dailey writes:

> Homosexual or lesbian households are no substitute for a family: Children also need both a mother and a father. Blankenhorn discusses the different but necessarily roles that mothers and fathers play in children's lives. "If mothers are likely to devote special attention to their children's present physical and emotional needs, fathers are likely to devote special attention to their character traits necessary for the future, especially qualities such as independence, self-reliance, and the willingness to test limits and take risks." Blackenhorn further explains:
>
>> Compared to a mother's love, a father's love is frequently more expectant, more instrumental, and significantly less conditional…For the child, from the beginning, the mother's love is an unquestioned source of comfort and the foundation of human attachment. But the father's love is almost a bit further away, more distant and contingent. Compared to the mother's love, the father's must frequently be sought after, deserved, earned through achievement.

They are very different roles. Dailey continues:

> Parents also discipline their children differently: "While mothers provide an important flexibility and sympathy in their discipline, fathers provide ultimate predictability and consistency. Both dimensions are critical for an efficient, balanced, and humane child-rearing regime. The complementary aspects of parenting that mothers and fathers contribute to the rearing of children are rooted in the innate differences of the sexes, and can no more be arbitrarily substituted than can the very nature of male and female. Accusations of sexism and homophobia notwithstanding, along with attempts to deny the importance of both mothers and fathers in the rearing of children, the oldest family structure of all turns out to be the best.

As I said earlier, marriages do not always last, and many end in divorce. That is not the issue here. We are not talking about broken marriages and broken homes; we are talking about adoption, about a small number of children who are entitled to have their rights

looked after. Their rights are meant to be the paramount consideration in what occurs—not the rights, desires or wishes of adults. The vast majority of people in this city do not want to see same-sex adoption. The vast majority of people in this city have shown that they are very tolerant indeed—witness the responses you got to your own survey—but they draw the line at gay adoption and for very good reasons.

No matter how good, decent, nice or competent same-sex people are, when it comes to adoption similarly nice, decent, component able male/female people and persons in a relationship have, simply by the very nature of being males and females, a better ability in our society to look after the best interests of the child. Reams of evidence have been accumulated on that. I thank the members of the community who oppose this legislation, groups like the Australian Christian Lobby, who have given me much material. I thank the members of the gay and lesbian community, who have also given me reams of material to read. That has been very important in looking at this issue. But at the end of the day, we have to have regard to the best interests of the child, and quite clearly that means a mother and a father when it comes to adoption.

MR PRATT (5.45): Today we have heard many different opinions about a controversial, yet necessary, debate and we will hear a lot more yet. We have heard both negative and positive opinions from members of the Assembly, while my office has been flooded with emails and letters from the Canberra community on the Parentage Bill 2003.

The Liberal opposition do not believe that this bill should be passed here today. We do not believe that passing this bill would be the best thing that this Assembly could do for the children, and the broader community, of Canberra. Children have a right to be brought up by both a mother and a father. It takes both a mother and a father to conceive a child; it takes both to bring up a child properly. We have heard child welfare experts state that children need both male and female nurturing and role models in their lives to satisfy their emotional, mental and physical needs and to support the development of values and personal discipline, particularly amongst boys who have an educational difficulty these days in developing that drive to go forward and be successful and responsible citizens.

How then, Mr Deputy Speaker, can the Labor government be proud to be proposing this legislation, to be passed here today? The ACT government is elected to do the most appropriate thing for the Canberra community. As I stated before, my office has been flooded with emails and letters that oppose this proposed legislation. I can guarantee that my colleagues in the Liberal Party, and the rest of the members here, have also received such opposition from the community. How then can the Labor government claim that they represent the best interests of the Canberra community?

This legislation would allow the automatic veto currently set for gay couples who apply to adopt to be removed and allow them to be judged just like any heterosexual couple. This is not appropriate. The Labor government has no right to indirectly place a child, through the adoption process, in a situation where they are not exposed to both male and female care and role models.

Let me turn to the fundamentals of our responsibilities as a society with respect to our children and our youth—our most important asset. I refer to this dynamic in order to

background my concerns, and what I know to be the deep concerns of society, about the Parentage Bill. I speak as a member of society, I speak as a parent, I speak as a professional and I speak as the shadow minister for education when I address the obnoxious nature of this irresponsible bill.

What is one of the most fundamental responsibilities of society? It is the responsibility to raise our young properly and prepare them to be, in turn, responsible members of society. ACT society, Australian society and any civilised society are practically, morally and legally responsible for nurturing, developing, guiding and loving their young and, ultimately, for educating and training their youth.

Mr Stanhope: What do you think of single mothers, Mr Pratt?

MR PRATT: I will talk about that later, Mr Stanhope. No problems. To that end, society must support the traditional family structure, which is the essential building block of society and the entity most responsible. It, too, needs the help of society to nurture our young. Since time began, and certainly since civilisation took hold on this earth, the natural building block and family structure have been both fathering and mothering society's children.

Why does this government not understand or care about that fundamentally time-honoured principle of mankind and society as the plank upon which we rear our children? Why does this government fail to understand that this time-honoured tenet relevant to our youth must be protected at all costs? Why does this government fail to understand that it is failing in its duty of care to our youth by pursuing the introduction of this bill? That is what they are doing: failing in their duty of care.

They are failing in their responsibility to take a leadership role in the fundamental responsibility that society has: to raise its youth. The Stanhope government is required to set an example in the protection of what is sacrosanct, and it is dismally failing again. The Stanhope government is only taking into consideration a small portion of its constituent base, not its entire constituent base.

This government was elected by a majority to govern in the best interests of the territory. I accept that government must take note of minority constituency issues and must ensure that, in all fairness, the legitimate requirements of all sections of society are taken care of. That is a fundamental responsibility of government. But this cannot be at the expense of fundamental principles—for example, what is in the best interests of our children. This is exactly what this government is doing. With this bill they are failing children; they are not supporting the sanctity of the family.

Through changed circumstances, we know that a significant proportion of our children will be raised by one parent. We know that fantastic jobs of parenting mostly occur in these circumstances. We know that. We know that being in a single-parent family is the hard reality for a great proportion of our children, and we as a society must strive to do more to support those single parents and the parents in those single-parent families. We on this side of the house hold that as a fundamental tenet.

Let's not see social engineers use this dynamic—the reality of single-parent families—as an excuse for turning upside down tens of thousands of years of accepted and natural

societal practice. Father and mother parenting is the fundamental benchmark. Let us see a government that has the moral fibre to defend the sanctity of the family as something that everybody must strive for, that every child must be given the chance of having.

The Stanhope government's irresponsible and careless position on parenting should not be entirely surprising when we take note of its ambivalence on important societal dynamics impacting in education. The cavalier approach by this government to family structure is reflected in its unwillingness to take seriously the very deep concerns felt in the community, and in the education community, about sliding values and deteriorating boys' education. The government thus far has demonstrated total ignorance, or a position of self-denial, about the urgent need to address the teaching and the imparting of values in our school system. Values and parenting are closely related issues.

Mr Stanhope: Are you talking about public or private schools there, Steve?

MR PRATT: I am talking about both sectors, Jon. Values mean developing responsible behaviour; love for family, community and nation; tolerance; and personal discipline to strive to better oneself in a positive and a contributing way. A stable family life and a mother-father parenting situation are fundamental to striving to achieve the development of strong values. Male and female role modelling is so important for boys and girls in their development of values at home and at school.

Similarly, boys' education, in terms of raising both the academic and behavioural standards of boys—a very important challenge across the Western world and here in the ACT—depends largely on loving father-mother families and sufficient male role models in our schools. I will quote an expert in the area of boys' education who talks about the problem that many of our boys face in single-parent families, which I believe goes to the heart of this debate about balanced families. Ian Lillico says:

> A further issue impacting on our young males is the changing world of work and the steady reduction in the number of labour intensive jobs. Boys, previously, who didn't have an academic leaning, often took these up. The continued fracturing of the family unit and low engagement of fathers and male guardians in their sons' schooling has further exacerbated the problems boys face in their school years, particularly when going through puberty. As well as the disappearance of many traditional male careers there has been a marked increase in male anxiety regarding the future, employment prospects, role uncertainty and a marked increase in the male suicide rate.

I pull out particularly the issue of boys' education, but the impact on boys' education is only a marked issue in terms of the impact on boys and girls if they do not have male and female role models at home and at school. That is an issue that we should reflect on.

These serious issues go to the heart of how ACT society manages children's and youth affairs. We see self-denial by this government that these challenges even exist, let alone that they need to be addressed. Instead, this government has the audacity to waste its time and resources on social engineering initiatives, such as this one that we are debating today, rather than going to the heart of the core issues. The Stanhope government needs to spend more time addressing the core issues that we need regarding the development, raising and nurturing of our youth, rather than wasting time on social engineering initiatives, such as what we are seeing here today with the debate of this bill.

The people of Canberra do not want this legislation to pass. The Canberra Liberals do not want this legislation to pass. I can only hope that the crossbenches also do not want this legislation to pass. How many people need to be opposed to this legislation for the Labor government to take notice and properly represent their constituents? How many more emails and letters of concern need to arrive in our offices before the Labor government realises that this is not what the people of Canberra want?

Children have a right to both a mother and a father. The Labor government has no right to take that away from an innocent child. The rights of the child and the sensible development of values in our children are fundamental responsibilities of this government, and this government is failing in this. Look after our children first, not the desires of other lobbies. Children first, Mr Stanhope. Do your job.

MS DUNDAS (5.58): Mr Deputy Speaker, I will be proudly supporting this bill today.
An incident having occurred in the gallery—

MR DEPUTY SPEAKER: Order! Members of the gallery are welcome to listen to this debate, but they may not applaud. They must remain silent and behave themselves, otherwise I will clear the gallery.

MS DUNDAS: This bill is about treating all children equally. This bill helps ensure that all children have the same rights and protection of the law, regardless of the gender of their parents. It places the legal responsibilities of being a parent on everyone who has children in the ACT, regardless of whether they are of the same sex.

This means that those children who have same-sex parents will be able to get consent for emergency medical treatment from both their parents. They will be entitled to compensation if either of their parents is killed at work. They will have a claim to child support from both their parents in the event of a separation. They will have a right to claim benefits from the estate of both their parents if one of them dies.

The Australian Democrats' national policy on this issue is very clear. To quote from our national policy on sexuality and gender:

> The Australian Democrats believe there should be no discrimination based on sexuality or gender identity against couples in their assessment for suitability and eligibility for parenting…We believe that eligibility criteria for fertility and surrogate programs should not discriminate on the grounds of sexuality or gender.

I am proud to be in a party that will stand up for and unequivocally state our support for the equal rights of all people and for all families.

The structure of the family has changed constantly throughout history. The idealised nuclear family, with just a mother, a father and 2.3 children, is, in fact, a very recent invention. A couple of centuries ago, the nuclear family was very rare; it has not been around for tens of thousands of years. Most people lived in extended family groups, with grandparents, aunts, uncles, cousins, sisters-in-law and others all in one extended family household and with adults taking responsibility for all children in that household, be they their direct descendants or not.

More recently, we have seen other changes in the structure of the family. As Hugh Mackay pointed out at the launch of the Social Plan last week, only a small minority of households are now made up of a married couple and their exclusive children. There is an increasing number of single-parent families and of families where the parents have decided not to get married. There is an increasing number of blended families, where the children do not necessarily have the same parents. There are also families where the parents are in a same-sex relationship.

The structure of the family will continue to change and evolve in the future. It is not our job to try to pick one type of family and say it is better than all others and give that type of family special privileges over all others. It is the job of governments and parliaments to ensure that all types of families are recognised, respected and supported. Whatever type of family children are being raised in, those children should have the same rights under the law and their parents should have the same responsibilities. This is what this bill does today.

It is a shame that the public debate around this bill has focused almost exclusively on adoption, when the bill deals with so many more issues. But I would like to point out that allowing same-sex couples to apply to adopt children is not groundbreaking. We are not going it alone in this regard. Similar legislation allowing the adoption by same sex-couples was passed in the West Australian parliament some three years ago. The sky has not fallen in. There has not been a rush by same-sex couples to adopt children. I understand there has only been a handful of applications, and I must say the moral fibre of Western Australian society has not crumbled. God has not struck down on Perth and Fremantle.

The fact is that, regardless of whether these changes are about adoption, it will be a very rare occurrence that any same-sex couple will adopt a child through general placement adoption. Given that there are only one or two such adoptions in Canberra every year, it is very unlikely that any couple, whatever their sexuality, will be lucky enough to adopt a child through this method.

It should be noted that the best interests of the child are the highest priority in general placement adoption. This is a principle that will not change. Nobody has a right to adopt a child. It will always be a special privilege, and that is something that the people who are continually protesting should be aware of. We are not changing the fundamental principles. What we are doing is removing the automatic veto against same-sex couples that exists today. The adoption process is meticulous, strict and thorough. It keeps the best interests of the child foremost at all times, and none of this will be changing.

The real benefit of the changes to adoption laws, and where they are going to have the greatest impact on Canberrans in same-sex relationships, is in known-child adoptions. This is where a person may adopt their partner's child from a former relationship or where the child has only one recognised parent. If there is another parent from a previous relationship, consent would be needed from that person to allow the new parent to adopt.

This will have real benefits for children living right now here in Canberra: their relationship with their parent will be legally recognised, and it will allow parents to undertake the protection of and responsibility for their children. That is such a

fundamentally good thing, and I cannot understand the opposition to allowing families that currently exist in the ACT to have their rights and responsibilities enshrined in law, as are every other parent's rights. This bill extends the rights of children and promotes their best interests.

A number of people have questioned the ability of a same-sex couple to care for children, but the available evidence is that there is little, if any, difference to the developmental outcomes of children reared by same-sex parents. This is the outcome of numerous studies that have appeared in reputable, peer-reviewed, mainstream scientific journals.

There are great lesbian and gay parents and not so great ones, just as there are great heterosexual parents and not so great ones. Children need love, commitment, security and attention from their parents. It is not important what the gender of those people are. It is the duty of governments and parliaments to encourage parents to keep up with the important and difficult work of raising a child and to assist those parents who struggle.

It is our job to ensure that a child's relationship with their parents is protected and reinforced by the laws of parliament. Out in the community it is clear who the parents of the child are. It is those people who get up in the middle of the night to feed the hungry baby. It is those people who change the nappies and create a loving home for their children. It is those people who watch nervously as their kids perform in the first school play or walk onto the field in their first sporting competition. It is those people who proudly watch their kids graduate from high school or help them get their first job. Parents' commitment and devotion to their children have nothing to do with their sexuality, just as a child's love for their parents is not based on gender.

I would now like to address some of the issues raised with this legislation by the Scrutiny of Bills Committee. The first issue they raised was the lack of a mechanism whereby the child might obtain information about their genetic ancestors. By raising this, the committee raised the question of whether a child has a right to information about its genetic parents.

This is an important question for the Assembly, but is also a very involved and complicated debate, and it is important to note that this question goes far beyond the provisions of the Parentage Bill, which we are debating today. It is relevant to a whole range of parenting issues that have nothing to do with the same-sex status of those parents.

The scrutiny report presented the case of a British woman who was conceived by artificial insemination. The court found that she had certain rights to non-identifying genetic information about the donor. However, does this apply in situations where there was no artificial insemination? The scrutiny report points out that this legislation recognises the social parents of a child and not always the genetic parents.

However, people have been recognising the social parents of children for thousands of years in a whole range of different societies. For example, one of the presumptions in this bill is a very old presumption arising from marriage. If a married woman has a child, the government presumes that a husband is the father of that child. Of course, we all know that that is not always the case, as much as some people may not wish to admit it.

So does a child have a right to know who their genetic father is if he is not the mother's husband? Should we genetically test every husband before he is allowed to go onto the birth certificate? Another example might be the hundreds of children born each year who only have their mother listed on their birth certificate. The father of the child is either not there or had not wanted to be there. Does the child have the right to know? How would a government enforce that right? Would we somehow threaten the mother if she did not disclose who the father was and bring up a whole array of situations that led to the birth of the child?

I put these examples forward to demonstrate that this issue goes way beyond same-sex couples and even beyond artificial conception. The current method of recognising the parents of children is to recognise their social parents. We have been doing that for tens of thousands of years. That is the approach taken in this legislation, and it is applied whatever the gender of the parents.

Other issues have been raised by this bill. I note that today we are specifying that a child may not have more than two parents. I put the question forward: is that always the case? There are numerous examples of Family Court arrangements where parental responsibility has been shared between more than two parents. For example, a child's mother, father and a stepmother. Are we sure that we are acting in children's best interests by limiting them to just two parents? There are further issues that we need to explore here, and we need to have a genuine examination of these issues to ensure that our laws continue to act in the best interests of children.

The issue of access to genetic information obviously needs further investigation, and I hope the government will commit to looking further at this issue, as I believe New South Wales is currently doing. However, the fact that this work needs to be done should not prevent us from passing this bill today, which simply implements the existing approach in a non-discriminatory way.

I will now take a moment to acknowledge the hard work that has gone into putting this bill on the table. I know that the staff in JACS have been working hard for a very long time on this legislation and have taken a long-term perspective in producing an integrated approach to parenting laws in the territory. It is true that the laws on parenting are often confusing, unclear and often conflicting across jurisdictions.

This opportunity has been successfully used to unite laws regarding parenting, and a single, logical piece of legislation combines the existing statutes in one place. This process has been above and beyond the piecemeal approach that has occurred in other jurisdictions, and I am happy to commend the work the government has done and the work of the departmental staff.

As I said, I am proud to see this legislation pass in the Assembly today so that the ACT will finally treat the love of all parents as equal. I repeat that there are great gay and lesbian parents and not so great ones, just as there are great heterosexual parents and not so great ones. The main issue that we need to look at is that children need love, commitment, security and attention from their parents, whatever gender they are. And that is what this legislation achieves today.

MR HARGREAVES (6.12): I am pleased to support the Chief Minister today and I am honoured to be part of a Labor government that has brought forward this inclusive legislation. The Parentage Bill 2003 forms part of the Stanhope government's commitment to reforming areas of ACT legislation that still discriminate on the grounds of sexual preference or gender identity. It is a commitment that the government took to the last election. It is a principled commitment and a commitment that we are pleased to deliver on today.

The Chief Minister announced the broad direction of the amendments when the government report to the ACT Legislative Assembly, *Discrimination and gay, lesbian, bisexual, transgender and intersex people in the ACT*, was tabled in this place in May last year.

This report followed the release of a community discussion paper dealing with the legally complex issues of civil unions, parenting, adoption and antivilification legislation in December 2002. This community consultation process was valuable in that it allowed all members of the community to contribute a view. It also follows the passage of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002 and the Discrimination Amendment Bill 2002.

The law reform process goes back even further than that, though. It began in ACT Young Labor in 2000 with a series of debates and resolutions. These resolutions were supported at successive ACT ALP conferences in 2000 and 2001. In fact, the 2001 conference, in full gaze of the media and only three months before the 2001 election, unanimously supported the following policy on gay and lesbian law reform. It reads:

> Labor believes that all people are entitled to respect, dignity and the right to participate in society and to receive the protection of the law regardless of their sexual orientation or gender identity. Labor will implement policies and legislate generally to give effect to this belief. In particular, a Labor government will:
>
> 1. Establish a special inquiry to investigate and make recommendations to achieve equal legal status for gays and lesbians in the ACT.
> 2. Introduce programs to fight discrimination against, and vilification of gays and lesbians; and legislate for two people regardless of gender to enter into a legally recognised union.

Mr Deputy Speaker, I note that in March 2002 the Chief Minister established an inquiry to investigate, and make recommendations towards achieving, equal legal status for gays and lesbians in the ACT. That inquiry reported in August 2002 and identified 70 acts and regulations that discriminated against gays and lesbians. The government has moved to remove this unjust discrimination. The legislation here today removes discrimination relating to sexuality and relationship status and, in particular, removes discrimination relating to parentage.

Currently, some children of couples who do not fit into the traditional model may not have two legally recognised parents. The government's view is that this is contrary to the best interests of those children. This bill is designed to address this issue. The Parentage Bill will allow a same-sex partner of the mother or father to become a child's second

parent. This not only removes discrimination against same-sex couples; it redresses the legal position of their children.

Until now, children who were born into same-sex families were disadvantaged by having only one parent recognised by the law. These changes will also mean that those children will get the legally recognised connections to extended families that children of opposite-sex couples have, such as to grandparents, uncles, aunts and cousins. While many of them already have those connections in a social sense, this bill allows them to be recognised by the law. That recognition has important implications in relation to inheritance and other property issues.

The Parentage Bill also amends the Adoption Act 1993 to allow the court to consider a wider range of people as potential adoptive parents by removing the current discriminatory provision that only allows the court to make an adoption order in favour of heterosexual couples. This will allow the court to consider a wider range of people as potential adoptive parents. The paramount consideration in every adoption case is for the welfare and the interests of the child concerned. This will not change.

The Adoption Act contains robust safeguards to ensure that the welfare and interests of the child is protected. For example, nobody may apply to be placed on the register of persons seeking to adopt a child unless they are persons of good repute and are fit and proper to fulfil the responsibilities of parents of a child, including protecting the child's physical and emotional wellbeing.

They must also be suitable persons to adopt a particular child, having regard to their ages, education and attitudes to adoption and their physical, mental and emotional health, particularly insofar as these impact on their capacity to nurture the child and the welfare and the interests of the child are promoted by the making of the order.

Section 19 of the act sets out the criteria that the Supreme Court must use in making an adoption order, which include whether any required consents have been given; whether the wishes of the child, where a child is of an age and sufficient understanding to express a wish, are met; and whether the welfare and interests of a child will be promoted by making the order.

The amendments to the Adoption Act and to the Parentage Bill do not alter any of these provisions. The changes to adoption law and the changes to parentage presumptions will promote the interests of children who are being brought up by same-sex partners but who, under current law, are prevented from having a legal relationship to the significant adults in their lives. Like most other children, they will be able to have two parents responsible for their care. These changes will mean that, in the unfortunate event of the death of one parent, the children will have another parent with legal responsibility for their care.

Government members have received some noteworthy correspondence from constituents on this matter, and I would like to share some of them with the Assembly today. The first is from a mother of three in the southern part of Tuggeranong, who wrote last year:

> Two weeks ago our second oldest child, a daughter aged 17, painfully confided to her father and me that she is a lesbian. As parents we were caught by surprise, but

> the only issue of remaining concern to me is that my sweet girl have the same opportunities available to her that her brothers and sisters take as a given.
>
> She is a bright, conscientious student and I felt confident she could achieve anything she wanted in life. Now I'm worried that prejudice and conservatism may jeopardise her access to even basic choices such as forming a legally recognised relationship with someone she loves and raising children born to her, her partner or through adoption.
>
> I am anxiously awaiting the outcome of this bill and urge you to continue your support.

Another constituent of mine in Pearce wrote to say:

> I have dear friends, men and women, who are adversely affected by inequities in ACT legislation—by not having their relationships recognised, by not having access to the same services as other people, by not receiving the same support and recognition as other people.
>
> I urge you to ensure that the government removes all discrimination against GLBTI people from ACT Laws.

Finally, I would like to share the thoughts of a doctor in the Molonglo electorate, who wrote as follows to offer congratulations and support to the government for the legislative changes:

> I commend your leadership in respecting that we are all human beings, with human rights, and that discrimination is not acceptable.
>
> Supporting the endeavours of each and every one within our community to maximise their contribution as an individual, as a partner, and if desired as a caring, parenting adult, whatever their relationship or family constellation, can ultimately only benefit us all.
>
> Thank you for your vision and determination to contribute to a more accepting, respecting and safer community.

You hear a lot these days about how there is no real difference between the major political parties on matters of substance. I invite people to look at this debate, and the previous debate, on eliminating discrimination on grounds of sexuality or gender identity. The difference could not be more dramatic.

Labor has put forward a progressive but comprehensive package of reforms. We have sought to offer social inclusion, respect, acceptance, tolerance and hope to a group of Canberrans who have previously been treated very badly. The Liberals have opposed it at every stage. They play the politics of intolerance and exclusion. They have perpetrated a fraud on the people of Canberra. They can no longer credibly call themselves liberals; they are now the big "C" Conservatives. The small "l" liberal wing of the Liberal Party is well and truly dead.

In conclusion, I thought it worthwhile to share the observations of the UK social commentator Brian Whitaker, who wrote in the *Guardian* newspaper in April last year

that the repression that gay and lesbian people face is passionately defended by politicians or individuals in the name of religion, culture, morality or public health. Same-sex relations are dubbed "unChristian", "antifamily" or a "bourgeois decadence".

Whittaker observes that the president of Zimbabwe, Robert Mugabe, takes a more original line: lesbians and gay men are "less than human" and therefore not entitled to human rights. Whatever anyone thinks of Mr Mugabe's view, it does have a certain logic, which is consistent with big "C" Conservatism.

I say to those who oppose this legislation and other gay law reform bills: don't fudge the issue with arguments about cultural traditions or religion. Either all people have the same "equal and inalienable rights" or they do not. The Liberal Party is saying today, like it did last year, that all people do not have the same rights. They think some people are more equal than others, and that is a great shame.

I commend this legislation to the Assembly and thank the many thousands in the community who have lent their support to the government in this debate. They may not have had as loud a voice or been as well organised as the Australian Christian Lobby, but I am pleased to put their case to the Assembly today.

Sitting suspended from 6.24 to 8.00 pm.

MRS DUNNE (8.00): This is one of those very difficult line-in-the-sand issues that from time to time legislators are called upon to debate. It is very difficult and when you speak from the heart it is easy for those who oppose you to sling off at you across the chamber, as we have already seen in this debate. This is a hard issue that legislators normally shy away from. Because of that, I am grateful for the support of the community for the stand that I am taking. The stand that I am taking, along with my colleagues, is to quite definitely and undeniably oppose this bill.

I do not do that because, as might be characterised by some of those who would interject across the chamber, I am homophobic or I do not like single mums, or any of those things. It is not about that. It is not about adults. This is about children. This is about making the best possible choices for the people who are, for the most part, disempowered and unable to make those choices for themselves. This is about the exercise of what some in this place would like to refer to, on other occasions, as the exercise of the precautionary principle. Others might say, "If in doubt, do no harm." That is what it is about.

I thank the members of the community for their support, for turning out on three occasions, two of those in adverse weather conditions. By the general estimation, 3,000 people have turned out in Civic Square to send a message loud and clear to this legislature that this is wrong and that many—I daresay most—of the people in this community have very grave reservations about what is being done in this place tonight and the impact it will have over the years upon the children of the ACT.

Earlier in the debate, Ms Dundas said that this was done in Western Australia three years ago and the moral fibre of the community there has not fallen apart. What happened three years ago in Western Australia is in many ways immaterial and, as I said in an aside to my colleague at the time, we will not know for years what the impact of that

legislation will be. We will not know for generations, or at least another generation, what the impact of that legislation will be.

From time to time, Mr Speaker, you hear people talking at great length about how important it is that we make this change so that all adults can be treated equally. I am concerned about all children being given the best possible start in life. The best possible start in life is undeniably that they should reside preferably with the mother and father who bore them, but at least they should be in a household where they receive the love of a mother and a father, the nurturing of a mother and a father and the attention of a mother and a father. That is not to say that mothers and fathers, as couples, always make paragons of parents. We do not. We are all fallible to some extent or another, but it is the best that we have and it is the system that we should maintain.

As Ms Dundas said, we have heard a lot about people having done it before, so let's get on the bandwagon. Some members may not be aware that as recently as January this year the State of Florida upheld a ban on same-sex adoption. So it isn't everybody, and some fairly progressive jurisdictions have shied away from it. In our own country, South Australia has moved away from it and says that it will not happen. I think the message from Peter Beattie on Sunday about no sex, drugs and rock and roll in his Queensland shows that they will not go down this path.

Ms Dundas said that lots of research had shown that it has no effect at all. I would like to reinforce the statements made by Steve Dawson on Sunday in relation to just this issue. He said:

> Same-sex parenting is a relatively new phenomenon and there are few well designed studies that exist. There are a plethora of sub-standard studies which arguably, because of their volume and the acceptance by reviewers sympathetic to the gay lobby, have achieved the collective status of truth, that same sex parenting is beneficial to children. The quality of such studies has been strongly challenged by a number of researchers, including some more rigorous scholars sympathetic to the gay lobby.

He cites Patricia Morgan, the British sociologist, in a report called *Children as trophies*, and says:

> The bulk of her book is a review of 144 academic papers on gay parenting. She demonstrates that the overwhelming majority of these studies have been quite worthless. They are so poorly done that the results prove nothing. The methodological shortcomings include a failure to design the study properly, a failure to properly measure for relevant variables, failure to control for extraneous variables and failure to use proper statistical tests.

She summarises:

> While anecdotes may illustrate conclusions drawn from well-conducted research, they in themselves prove nothing. Using self-congratulatory testimonials is hardly objective science.

Those who cared to listen to Steve Dawson the other day would have heard him give a number of examples about how lots of journals which one would consider to be of a high quality and whose papers are, in fact, refereed have come up with very erroneous

conclusions that are now trotted out to us as evidence that everything will be all right if we just go down this path.

What we are doing here, in many ways, is very symbolic. As Mr Stefaniak has said, last year in the ACT there were precisely two stranger adoptions. We are making a law that will allow a very small proportion of the population, without appearing to be too critical, that does not provide, for the most part, the sort of environment that is appropriate for raising children.

Mr Stanhope: Explain that for us, Mrs Dunne.

MRS DUNNE: I will explain that. If a couple present themselves to an adoption agency here or anywhere else in this country or anywhere else in the Western world, they are screened for all sorts of things. They are screened for psychological stability, their propensity for disease and illness, how long their relationship has been and how stable it is—a whole range of things that go to their capacity to nurture a child who may be given into their care. This is not about having children as trophies.

Mr Stanhope: What's sexuality or gender got to do with that?

MRS DUNNE: This has nothing to do with having children as trophies, but it is, sadly, a comment on the gay lifestyle. We see lots at the moment on TV about how good the gay lifestyle is, but this is not *Queer Eye for the Straight Guy* and another fashion accessory—these are the lives of children that we are talking about.

An incident having occurred in the gallery—

MR SPEAKER: Mrs Dunne, resume your seat, please. As has been said before, members of the community are welcome to come to this chamber, take their places in the gallery and witness what happens in this place, but to interrupt proceedings is against the standing orders. If it persists, I will be forced to clear the gallery.

MRS DUNNE: In a fairly courageous speech the other day, Dr Steven Dawson also cited another study. Thomas Schmidt, in his book *Straight and narrow*, surveyed 200 studies of the gay lifestyle. He concluded by saying:

> Suppose you were to move into a large house in San Francisco with a group of 10 randomly selected homosexual men in their mid-thirties. The relational and physical health of the group would look like this:
>
> > Four of the 10 are currently in relationships, but only one is faithful to his partner, and he will not be within a year. Four have never had a relationship that lasted more than a year, and only one has had a relationship that has lasted for more than three years. Six are having sex regularly with strangers, and the group averages almost two partners per person per month. One is a sadomasochist and one prefers boys to men.
> >
> > Three of the men are currently alcoholics; five have a history of alcohol abuse and four have a history of drug abuse. Three currently smoke cigarettes, five regularly use at least one illegal drug, and three are multiple drug users.

> Four have a history of acute depression, three have seriously contemplated suicide, and two have attempted suicide. Eight have a history of sexually transmitted diseases, eight currently carry infectious pathogens, and three currently suffer from digestive or urinary ailments caused by these pathogens. At least three are HIV infected, and one has AIDS.

These are not nice things and are very difficult to say. But this is not the sort of environment that an objective psychologist or social worker assessing someone for their suitability to adopt children would willingly accept as being suitable for adopting parents to live in—and this is what we have to do here. The minister and others will say that we will assess this on a case-by-case basis, but that will be exceedingly difficult. We are going to put demands upon social workers and people who assess people—

Mrs Cross: Are you suggesting that these conditions only occur in homosexual couples?

MRS DUNNE: They make these assessments for heterosexual couples: do they have a propensity to suicide; do they have a propensity for mental illness; do they have a range of diseases that will make it difficult for them to provide long-term care; do they have a stable relationship? We do not willingly put children who are already in a difficult situation into unstable relationships and make their situation worse. These are all things that we have to do as a community and now, by this legislation, we are proposing to put onto social workers another layer of things.

Suddenly they are being told that if someone from another class of people comes forward, they must not discriminate against them. We have done it in such a way, we have made such a brouhaha about the whole thing, that they will feel pressured to look more favourably upon one group than the other, and soon we will find that people will feel they are in a situation where they are forced to accept people onto the list that otherwise they would not. This is not a position in which you put social workers whose first call is to look after the welfare of children. This is not what we should be doing. In this whole debate you see this over and over again. We are putting responsibilities and pressures on people that normally should not be there.

I conclude by using the common man test—the classic man on the omnibus. Somebody who was not at the rally on Sunday spoke to me after the rally about what I thought should happen with the legislation and what it meant. This was a youngish person and by no means a bigot, who was saying to me, "Why do people want to go down this path?" I was explaining why I thought people wanted to go down this path. He said something that was probably insightful because he is young, only in his early 20s, and not far away from school. He said, "What would that do to a kid if he went to school and his schoolmates discovered that he had two mums or two dads?" Kids at school are put under enough pressure. That may be wrong, but this is what we are doing. If you have the wrong sort of spread on your sandwiches at school you get a hard time. If you do not have the right Barbie doll accoutrements you get a hard time, and suddenly some poor little six-year-old is going to say, "I do not have a mummy and a daddy, I have two daddies" or "I have two mummies".

Think of what that does in the playground. We may not be able to control it but, Chief Minister, you do not legislate against six-year-olds giving their classmates a hard time, and this is what will happen. This legislation is a complete abolition of common sense.

Everyone here today is quoting what their favourite constituent has said about this bill. I will just leave you with one quote from a resident from Aranda, “The late ACT Labor—out of control and out of touch.”

MRS BURKE (8.14): Much has been said and many points have been covered, but I am absolutely flabbergasted that the Chief Minister continues to push forward with this legislation when it is clear that the majority of the people in the Canberra community are so against the legislation. They are not against the people that sit before us in the gallery. This is not about personalities. This is about the rights of the child. The Chief Minister espouses rights very strongly. Where are the responsibilities? He stands there telling the people on this side of the house about the rights of children. Why isn’t he thinking about them in this case? This legislation, of course, is not about the rights of children, is it, Chief Minister?

Mr Stanhope: Yes, it is. Absolutely.

MRS BURKE: It is about pandering to his political factions and minority radical groups. He has been known to say that to people and he cannot deny it. Why is the Chief Minister driving the push to fundamentally change the way humanity best functions? It has been good enough for thousands and thousands of years. Why would we now want to socially experiment? The Chief Minister is on a very dangerous track. He can laugh all he wants; he is on a dangerous track.

Of course there are exceptions to the rule, such as where a marriage breaks down. That happened to me. I was a single parent at one time and I can relate to that. The normal and accepted best practice model for a family unit is a father and a mother. Much has been talked about it, many statistics have been shared about that. If that is not the case, I ask: why then were we created males and females? Perhaps that is too simple a thing to come to terms with; I am not sure. One of the reasons, of course, is to reproduce, but I am not going to go into that debate now.

Children should not be subjected to a situation where they do not have a say. Is the Chief Minister going to tell me that children will have a say in all cases? Of course they will not. Is he going to tell me that in years to come we are not going to be faced with young people saying, “Why did you make me go into this arrangement, when my friends have a mother and father? I have been told, or I was told, I had to grow up with two mums or two dads.” Are you not concerned about that consequence? It is already happening. The Chief Minister can laugh and scoff all he wants.

Mr Stanhope: Only because people like you look down on it. You are the cause.

MRS BURKE: Who on earth are we to use children in this changing structure? Ms Dundas referred to society as a changing structure. Does that mean we have to accept everything that people’s flesh wants? Do we pander to everybody who wants to do everything that they want to do with gay abandon? Probably. It seems that in your book that might be the case. Children are made up of both male and female, and both sides of a human being need motherly and fatherly love.

Let me read a few extracts from the people who have contacted me and others in this place. First of all, I refer to a news release from Good Process:

> The heart of the issue is whether gay people should be subject to an automatic veto based on prejudice and stereotypes, or whether their suitability to be parents should be judged on a case by case basis by child welfare experts", said Good Process spokeswoman Liz Keogh…Currently children being raised in gay families do not have the same protections…

And she goes on. Does the government think children are going to have the same protections in what it is proposing? I do not think so. It is not giving them a chance to have a say. The Australian Christian Lobby is an apolitical group, despite Mr Stanhope wanting to refer to it as some rabid, extremist Christian group. Many people who are not particularly Christians would support the Australian Christian Lobby. They do not necessarily go to a church. Some of them are Buddhists. People from all over, from different communities, support what the Australian Christian Lobby stands for. Hundreds and hundreds of people have turned out and hundreds of people have written to the Chief Minister. He ignores them at his peril. In its media release, the Australian Christian Lobby says:

> …to sacrifice children's interests to narrow political agendas and its own civil libertarian philosophy…will be a dark day for representative government in the Territory.

The Chief Minister can keep sliding but is he bringing the community with him? The media release goes on:

> Mr Stanhope lamely says that he has conducted "lengthy discussion", but what he doesn't say is that he has refused to listen to that discussion.

That is very symptomatic of this government—"Yes, we will consult, but we really will not listen, we will tell you what's good for you." The media release continues:

> 90% of submissions to the public consultation process said they did not agree with the proposal to allow homosexuals to adopt children, and yet he is planning to push it through on the weight of his numbers regardless of community opposition," said Mr Wallace.

We are about numbers in this place and Mr Stanhope knows that. He knows that six against 11 isn't going to get anything up. He is sitting there knowing that on the basis of 11 people this city is going to be faced with one of the most major decisions that we are about to enter into. I do not think that he has contemplated this enough.

Mr Stanhope: It's called democracy.

MRS BURKE: No, it isn't called democracy—far from it, Mr Stanhope, far from it. I would also like to quote from somebody who represents the multicultural community. This lady emailed me to say:

> …one of the children have said…"they would not (the child) like to judge, but for themselves, they would not like to be in a family with the prevalence (only) of the same sex."

I will give more quotations from the multicultural community that Mr Stanhope also stands on behalf of. So, he is going to be letting them down also. These comments come from the thoughts of children aged 13 to 15, asked randomly what they would like to see happen and how they see growing up in same-sex-couple families. It will be interesting for all the people that are here tonight to hear this, too. I have openly said before that I have a cousin that is homosexual, as well as a nephew. I love them desperately.

Mr Stanhope: Do they talk to you?

MRS BURKE: They do talk to me; of course they do. Is that what you said? That was a bit of a stupid question, wasn't it? Of course they do; they are family. A number of comments have been made to me by kids. One said, "When the kid is old enough they should have a say whether it's OK by them to live in a family with same-sex parents." That lines up with the criteria in section 19, as Mr Stanhope will know because he said so in a letter he wrote to somebody objecting, but still pushed ahead. He referred to "the wishes of a child (where the child is of an age and sufficient understanding to express a wish)". That means that this will only be allowed—I hope that it is in the legislation somewhere—where children can speak for themselves. I think that is fair. So we are not going to be talking about babies then, unless I have missed something.

On kid commented:

> …but if they are like 2 years old you can't really ask them, can you—I suppose they'll grow into it.

Another said:

> …with IVF the child has no choice, and unless there is support (other relatives of differing sexes) for the children in same sex couples' families, these children experience lots of problems with coming to terms with: self sex evaluation (unsure how they feel about their sexuality); never knowing their biological father—never having a father? children have the right to both mum and dad.

Yet another commented:

> …it is very important that there is another female relative or a male relative so the child can talk to them when they need to—

we are talking about relatives, not friends—

> (personal stuff) as they have the right to have access to both male and female support.

Yet another said:

> …it has been very difficult for a child I know (IVF); she has a brother, and it's been hard for both of them especially now that she is in high school (in same sex couple family)…

The comments go on and on. I will not bore members with them; if they want further detail, I am happy to provide it. I have had dozens of emails, as many members have. A

line out of one of them says that unquestionably what you are proposing to do, Chief Minister, contravenes the stated desires and wishes of the majority of the ACT's population. Isn't the Chief Minister forgetting the majority? I think he is.

I go on to a media release from the Fatherhood Foundation, which reads:

> Over the last few years, it has become politically correct to advocate for the rights of men and women independently of our children. Our children have rights too. One could argue that their position of dependence and vulnerability makes them even more deserving of advocacy than adults.

We are not hearing much about the children in what Mr Stanhope is saying, apart from their having rights. They do not under what he is proposing. I cannot see how they can. Many of them will not be able to speak for themselves. Mr Stanhope wrote to a constituent, saying:

> You should be assured that the Government is firmly of the view that the paramount consideration in every case is the welfare and interests of the child concerned.

How can it be? It cannot possibly be, and he cannot say in this place that the welfare of the child will be of paramount concern. He can say it, but I do not see how it is going to come into practice. He talks about its being discriminatory. As I have said before, it is sometimes right to discriminate. There are many times in life when we all discriminate on the grounds of common sense.

Mr Stanhope: When?

MRS BURKE: Do you tell your children just to cross the road and not look? The Chief Minister knows that; he is not that unintelligent. Well, I do not know about that; sometimes I am not sure. As much as I do not want any human being to be disadvantaged, there are times—and this what I have said—when it is right to discriminate. We must stand strong on the issue or else what lies ahead for our children? The Chief Minister does not know what he is taking us into. He has no idea what he is doing. He has not thought it through; it is ill-thought through and ill-conceived. Going down this path is going to be very detrimental for the children of our future. How can we speak for those children who cannot speak for themselves? How dare we think that we can stand in this place and speak for children.

Mr Quinlan: You are right now.

MRS BURKE: I am fighting for their rights. What are you doing?

Mr Pratt: She's defending them against your lunatic legislation.

MRS BURKE: I am defending the rights of children. I am fighting for the rights of our children.

Mr Quinlan: No, you're not.

MRS BURKE: Yes, I am, absolutely. I think on that I will rest my case.

MS TUCKER (8.27): The Greens will be supporting this bill. It really does something quite simple. It recognises in law the reality of parenting and families, as far as it recognises the existence of families parented by people with gay, lesbian and bisexual sexualities. This is something which is worthwhile and which the Greens are happy—it will be no surprise—to support. The strength of reaction by a sector of the community against this bill is quite surprising. The basic claim being made by the group called the Australian Christian Lobby who are organising the response is that they see this as a matter of the rights of the child. They say that they are not homophobic. They are now not saying that it is wrong to have a sexuality other than heterosexuality, which is certainly an improvement, but claim only to be concerned about the child's interest.

This is an interesting discussion. It is another where there are studies claiming to show opposite things. If one is going to get into the study, one needs to get into the research methodology, data strength and population and also into the question of what one is asking and why. A review of studies by the Commonwealth Parliamentary Library in 2002 considered all the studies done on the children of lesbian parents. There is still not a large set of data, but the conclusion to this review was:

> None of the evidence above serves to denigrate the contribution to good father parenting. It does indicate though that it is the good parenting rather than the father parenting that is relevant.

The paper goes on to say:

> Developmental research consistently reports that it is the quality of the family processes rather than the nature of family structure, for example, single, same sex or heterosexual couple parents, that is most important to the adjustment of the child.

In some places it may be socially difficult to be the child of a same-sex couple but it is also still socially difficult to be the child of parents who do not speak English at home. It is difficult if one's family is living in poverty, if one's family is Aboriginal or if one's parents are blind. Do we suggest that this gives us some right or obligation to split families up or not to recognise their relationship in all the ways that recognise the particular responsibilities that parents have?

Are we saying that wherever there is in our society a stigma, a dogmatic response, an intolerance or a judgment which is not favourable, we therefore say those people do not have the right to have children? Indeed, the package of law reform of which these bills are a part can only serve to make living as a same-sex couple easier by removing many of the discriminatory presumptions and barriers.

I will not go into the details of the other bill at this stage except to note that these steps towards removing discrimination, along with the gradual acceptance and recognition—hard won—must make living as a gay, lesbian, bisexual, transgender or intersex person easier. If there are risks to health and to relationships in the queer community, then removing these very real daily barriers must make things easier. Consider the kind of language that we have heard today from members of the opposition, the comments that Mrs Dunne made and the generalisations she made about gay men. One wonders how she can say she is worried that children of same-sex couples are going to have a hard

time when she is continuing to spread those kinds of generalisations about, as I think Mrs Burke called them—a class of people, a different class of people.

For some people, parentage is one of the more challenging areas for the removal of discrimination. It helps to remember that parentage in law is more about responsibilities than stability for children—that it is a benefit of such for the parents. Removing the barrier to adoption is the only change here that will directly affect the ability to become a parent, and that is only in very few cases. In the main, the benefits of parenting do not come from the law. It is surely not in a child's interest not to allow recognition of both of their parents—the two women who look after them every day, who share responsibility for their care, nurturing, education, upbringing. Children are already born to lesbian women and gay men are parents already, but the laws make it difficult for them to fulfil all their responsibilities.

For example, without legal recognition as a parent, there is no legal basis for making decisions in an emergency, decisions about health and medical care and arrangements with schools and childcare centres. These are all things that affect the wellbeing of a child, in that it means one of their parents, one of the adults who cares for them every day, does not have the legal basis to make the sorts of important decisions that parents must make. This lack of legal recognition also means that if a parent dies without a will, the child is not able to claim from that parent's estate. If a parent who is not legally recognised dies, their child is not able to receive that parent's superannuation death benefit. If the parent who is legally recognised dies, the surviving parent is likely to have to take legal action for the child to remain in their care. This is certainly and obviously not in the interest of the child or the parent. Adoption is not only about a childless couple adopting an unwanted baby. That does not happen very often at all in the ACT or in the rest of Australia.

Mr Pratt: And when it does we should get it right.

MS TUCKER: Mr Speaker, would you mind asking Mr Pratt to be civil? I do not interject on him. He could just sit there for once, couldn't he?

MR SPEAKER: Order, Mr Pratt!

MS TUCKER: As I said, adoption is not just about a childless couple adopting an unwanted baby. That does not happen very often at all in the ACT or in the rest of Australia. More often, adoption is about the more recent partner of the biological parent adopting the children they both care for, and hence legally cementing the new family unit. The process of being allowed to adopt in this way involves quite rigorous screening processes. This change to the law will mean that same-sex couples will be able to be screened in the same way as other people.

The claim to be concerned for the rights of the child has some disturbing parallels with the arguments used to support so-called protective actions, which led to the stolen generation of Aboriginal people in Australia. We have a problem in our society in trying to define a norm and then defining difference from that norm is harmful in and of itself. Even psychological testing manuals still reflect that. Not only was homosexuality listed

as a disease until quite recently; things like shyness are being defined as a treatable with drugs disorder. This is a diverse society and it is well past the time that our laws reflected that.

The scrutiny of bills committee report raised issues that are not really to do with this bill but are more general questions. They are interesting questions, but they are about potential problems not caused by the change at hand today. One of the issues is access to information about genetic heritage, when birth certificates are issued showing adoptive or parentage agreement parents as the parents. This is a broader question and one that is worth looking into, but it does not affect the decision before us today. The Family Court is the usual place for deciding in particular families what is in the best interest of the child when there is a dispute. There is one clause I will comment on in a moment that potentially complicates the access to information, that is, the restriction on recognition of parents to two. Ms Dundas talked about that in some detail. Perhaps it could be addressed by making provision for additional supporting documents to birth certificates. There are many issues relating to the anonymity of donors and so on.

The report gives an example of a Florida court ruling allowing discrimination in that state. The main argument in that judgment seemed to be that it is all right for the state to make laws on the basis of morality. That may be, but in this case my belief is that the morality is on the side of recognition of parents of sexualities other than heterosexual. Another court in the USA, the US Supreme Court in Massachusetts, has just this month decided that that state must allow same-sex marriages, because not to allow any registered relationships for same-sex couples is discriminatory. We need to look instead to our own values and what sort of society we want. For the Greens in this case, it means looking for a society that values and recognises committed and nurturing parenting above questions of sexuality.

I have a couple of concerns also. As I said, this bill puts into the law for the first time an explicit statement that there can be no more that two parents. It is difficult to see the reasons for that and a bit easier to see where it might cause problems. This is the practice in adoption, in that if there are two surviving parents, one must give up their legal parentage in order for another to adopt. But these are problems ultimately for the children concerned.

In situations of homosexual parents, the Family Court has had the flexibility to consider this matter in the past. I am not aware of any rulings that recognise more than two parents, but this new law would rule it out entirely. I question the need for this ruling out and question the potential for negative effects.

If the presumptions cannot result in more than two people being conclusively presumed to be parents, then there is no need for it. If it is possible for more than two people to be conclusively presumed to be parents, section 14 just creates uncertainty by stating that only two can be without indicating which two they should be.

We have all heard of both birth parents and adoptive parents being involved in parenting. Whether or not it would be helpful in that situation to recognise all as legal parents is another question. But the point is that there may be situations where that may be the best way legally to reflect the reality and so protect the interests of the child concerned. It is

one that the Family Court has not rejected completely, and I think it is unwise to remove this flexibility.

There is also a group of people who are not recognised by changes to the law. It is possible for a heterosexual woman to conceive with a man who is not her domestic partner. Under our child support and other laws, that man is considered to be the father and may be held responsible for some of the financial obligations of a parent. It is also possible for a homosexual woman to conceive with the sperm of a consenting man, in the presence of her partner, using some form of technology to introduce the sperm. In this latter situation, because of the use of technology, the male donor is presumed not to be a parent even when he is a willing participant and when he may be part of the resulting child's life.

Again, it is not that in every such situation it would be appropriate to recognise the male biological parent as a legal parent. It is anomalous that in the former scenario, where conception may well have been a surprise to the male biological parent and to the female parent, we have systems to recognise his responsibilities and roles. Resolving this issue in the law would require some consideration of intent, some consideration of consent and some planning for the future. But these are not insoluble, and I think these matters should be further considered.

Having raised these points, I would like to affirm again the Greens' support for this bill. I congratulate and thank all the members of the community who have been part of the process, the government, other members who have worked on it and the departmental officers involved. We still have some way to go, but this is a very important step which will make a real difference.

MS MacDONALD (8.40): Like my party colleagues, I will be supporting this bill. I rise to put forward some of the reasons I will be doing that and also to make comment on and refute some of the things that have been said in the last 40 minutes. I have had a few discussions with a number of people on gay adoption. I understand that many people in the community do not feel comfortable with the notion of gay adoption, but I do not think that is a reason not to proceed and not to change the law.

There are many people in our society who do not like going out of their comfort zones. They do not like change, and they do not like to confront the fact that there are people out there who have a different approach to life. There are people out there who have a different approach to life, Mr Speaker, as you and I well know. I do not condemn people for having a different approach to the homosexual community, but I do condemn intolerance and I condemn the fact that people are too scared to debate the issues with thought or to take into consideration that these changes to legislation will ultimately have a positive impact on the way we treat the gay, lesbian, transgender and intersex people in our community.

A few things have been said in the last 40 minutes that I really feel the need to refute. Mrs Burke quoted from a number of emails and letters she has received, including one where young people had been interviewed and asked what they thought of gay adoption. Their point was that when the adopted kid gets to the age of 14 or 15, they probably would not be very happy about it and they would probably want to change their parents.

I do not know about you, Mr Speaker, but there have been many times in my life when I wished that I could change at least one of my parents, and sometimes both. Children do not get to choose who are their parents. None of us get to choose our families. Certainly, children who are adopted do not get to choose their adoptive parents.

Mrs Dunne made the comment that, when people go up to adopt children, they are assessed for psychological fitness, likelihood of disease and length of relationship. I agree that this should be taken into account. Of course this should be taken into account with every couple that goes to adopt a child. But Mrs Dunne seemed to imply that, if you are a homosexual couple, you are more likely to have detrimental effects. She is implying that you are more likely to have a psychological condition if you are a homosexual couple.

I have to say that that is offensive. Whether or not she intended to make that link, that was the impression that came out. That sort of attitude towards people in our community is not acceptable. If we legislators say that it is okay to discriminate against people on the basis of their sexual choice, the rest of the community will take heed of that in some form because we are political leaders in this community. At the end of the day, there will be more likelihood of gay bashing. It is because of that reverse impact that I support this legislation and the other legislation that the Stanhope Labor government has introduced over time to remove discriminative barriers against the gay, lesbian, transgender and intersex people in our community.

It is very important that this be heard and that we say to the community, "You may not feel comfortable with it, and you may not have grown up with this thought as being the norm, but there are people out there who fit into this category and they deserve to be treated with some form of respect. They are human beings and they have rights as well, and they should not be treated as though they are second-class citizens."

Mrs Dunne made the comment that adopted children of lesbian or gay couples would be more likely to be teased in the playground. This is not the first time I have heard this argument; in fact, I heard it this morning over breakfast. I do not necessarily buy it. Children get teased in the playground for all manner of reasons. I got teased in the playground and my mother got teased in the playground. It had nothing to do with the fact that I had homosexual or lesbian parents—because I did not. It had to do with the fact that I was a dag. I am quite happy to admit that. I probably still am one, but I got used to it. At the end of the day, children tease each other for lots of reasons.

What is more important is giving children a stable background and the grounding, the ideals and the education that they need to get through life. Sexual choice does not make a difference to that, but the people who have been getting up and speaking against this legislation have not made an argument that sexual choice will have a negative impact on the ability of gay and lesbian couples to raise children.

MR CORNWELL (8.47): Mr Speaker, most members have canvassed all the arguments that we have to discuss in relation to this parenting bill, although I notice that the Chief Minister has been heavily supported by his own party. We have indeed heard from Mr Hargreaves and Ms MacDonald, but we have not heard from the rest of the frontbench. I am in fear and trembling that we are about to have a massive El Alamein

type attack very shortly and I trust that my own frontbench will be prepared for it. On the other hand, it could be that this may not happen. Perhaps some of them have some doubts about the legislation. I do not know; that is entirely up to them. But I do note that there have not been many contributors from the government bench.

Admittedly, much of what we have discussed tonight will not have a great effect. A great deal of it has been canvassed already: the fact that there are not many adoptions in the ACT, the fact that there are certain restrictions as to who can adopt and who cannot and the question of whether both parents agree to an adoption. So, to some extent, Mr Stanhope's legislation is tokenistic.

That brings me to a question that I believe needs to be canvassed in a more general sense. I refer to a letter which was sent on 22 November and which was headed "ACT government's obsession with gay issues", although it covers more than that. I quote:

> I grew up in Canberra and so take an interest in how Canberra has developed socially and politically over the past 10 years. I am slightly perplexed and bemused by the ACT Government's obsession with controversial issues such as same-sex adoption. Canberra has become famous around the country for seriously weird social standards—

Mr Hargreaves: Like graffiti.

MR CORNWELL: Yes, indeed, Mr Hargreaves! Yes, indeed! The letter continues:

> It loves prostitution, X-rated videos, heroin trials and now gay people being able to adopt children, and yet hates circuses—in case any animals get hurt, and hates people having the choice of smoking in clubs. It seems to this observer, that the ACT Government simply does not have enough to do. Whilst other local governments around the country worry about fixing holes in the road, and building schools and developing economic opportunities, the ACT Government must be so thoroughly bored that it feels it must tinker with the very fundamentals of human existence. Once upon a time this was left to individuals' philosophical and religious choices—now it seems that Mr Stanhope and his 'Curia'—

I would rather use the term "comic turn"—

> see themselves as dictators of social and moral standards. I hope and pray that Canberrans can muster up enough energy to really confront the idiocy of your leaders.

I think that is an interesting comment.

Mr Stanhope: Who wrote that, Greg?

MR CORNWELL: A person called Cathy Ransom sent it as an email. You probably would not have read it, Mr Stanhope. It raises the serious question, however, of what this government is all about because it appears to me that it is desperately keen to be progressive on anything. The point about the "seriously weird social standards" that Cathy Ransom makes is a reasonable question. I also think that other local governments around the country worry about fixing holes in the road.

This government avoids the hard issues: health, law and order, nursing home accommodation—and graffiti, Mr Hargreaves, graffiti. You tend to ignore these, do you not? You would much rather go for the soft issues. That is the way that you think; that is the way you wish to direct. Of course, it is a feature of Labor governments that eventually this madness takes over.

Mr Stefaniak: Bob Carr's not touching it, though.

MR CORNWELL: Indeed. But instead of continuing with running the country or running the state or running the territory, as people would wish, they have to start tinkering around with the social issues.

Mr Pratt: A bit like God, really.

MR CORNWELL: Well, yes. I will accept that interjection—a bit like God. The point I am making is that this is where they start coming undone. Mr Stanhope, by interjection, earlier talked about a minority government. Mr Stanhope, you are one because you are out of step with the majority of people here in the ACT. You are a minority government in that respect, even though you may have a couple of fellow travellers on the crossbench, and I would identify the Greens and the Democrats, as I do not wish to offend Mrs Cross. The fact is that you are a minority government in this respect.

I do not believe that the average person really wants to get involved in these things. I do not think they are terribly interested. They are however interested in health, they are interested in law and order and they are interested in the day-to-day activities. I would submit that these things are too hard for this government; therefore they will address what they see as the social issues. That is what they are looking at, and that is what they think will bring forth support for them.

I repeat Cathy Ransom's comment that "once upon a time this was left to individuals' philosophical and religious choices." I do not see anything wrong with that. I do not believe that that is a problem. If you are talking about choice and you are talking about tolerance, what could be better than an individual's philosophical and religious choice on these matters? But no, you wish to nail it down in this piece of legislation—and the next one, I hasten to add—as though people are no longer allowed to have their own views about anything.

Mr Stanhope: They're not, Greg. That's the point. The law prevents them. We are removing the discrimination. That's the point: we are allowing choice.

MR CORNWELL: You're not. You can move all the legislation you like—

MR SPEAKER: Order, Mr Cornwell! Direct your comments through the chair.

MR CORNWELL: Mr Speaker, let me say to the Chief Minister that he can introduce all the legislation that he likes but the fact is that you cannot change people's minds and hearts by legislation. It will not work, but you are obviously carried away with the thought that you can do it. Good luck to you, but you are wrong and you are going to be

proven wrong ultimately. The fact is that most people here do not believe that this type of thing is important.

Mr Stanhope: What type of thing?

MR CORNWELL: We talked earlier tonight about the fact that you cannot adopt without the consent of various people. What is it—two adoptions a year in the ACT? I do not believe this whole question is an issue, and I cannot understand why you are bothering with it and why you do not let people get on with their lives. It is typical of the Labor Party that they wish constantly to interfere and control.

You are supported by the Greens and you are supported by the Democrats. Ms Tucker talks about responsibility. The way you people wish to conduct life in this territory is that people are responsible for nothing. It is always somebody else's responsibility. This is why you insist on bringing on more and more legislation, most of which, including this, will be totally unenforceable. It simply will not work.

It is good tokenistic behaviour and you apparently believe that this is going to win you some votes somewhere along the line. I think you are sadly wrong. We, of course, will not be successful in this matter tonight but, as far as I am concerned, you have once again lost sight of what is important for the majority of people in this territory. I would strongly urge you to get back to good governance in this city.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (8.59): Mr Speaker, I would like to pick up on the theme of kids being teased in the schoolyard because they come from a different family structure. They would be teased by that lot. If you recognise that kids would be teased or bullied, which is what teasing boils down to, because there is some difference, whether it be in the structure of their family or any other particular difference that is perceived in relation to them, your efforts, if you were responsible, would be to address the problem.

I have to say that during this debate you, by your attitudes, have identified the problem. The society in which I want to live is a tolerant society. This society is a fairly tolerant society, but it has been through change—change that has passed some by—in my lifetime. Some of the attitudes that have been propounded in this chamber today smack of those attitudes that needed to be changed 40 or 50 years ago.

We have heard tonight some appalling references to stereotypes—that if you happen to be homosexual, you are probably drugged, diseased and half-crazy. I can tell you, without identifying individuals, that there are many people in this society that live in dysfunctional family units, dysfunctional in one way or another. If those units are dysfunctional, it is our duty to try to assist those people, not to marginalise those people. But that is not what we have seen by the continued reference to stereotypes and, secondly, the continued arrogance of the people opposite in saying, "This is the proper way to bring up children. This is the appropriate way to bring up children. These are fundamental principles."

Nobody put forward any empirical or logical evidence. What you did was you put forward a right wing values set and said that it was the only set to live by; therefore,

everybody else with a different attitude is wrong. I guarantee that in this chamber right now there are few, if any, people who would want to modify or interfere with the way you live. However, by sheer coincidence, there are a number of you in here that would pour scorn on the way others live. That is not a tolerant society.

By the schoolyard bullying example you used, you want, effectively, to institutionalise that form of bullying—"If you're not by our values, you're wrong." You are virtually saying that those kids deserve to be bullied. You should have been on your feet saying that the problem is these bullies probably live with parents that are giving them the wrong values, the intolerant values, and they are taking that intolerance to the schoolyard. That is a problem.

You talked about what the majority of Canberrans want. That is just a claim rather than anything that you could prove numerically. I did have the privilege many years ago—in the 1970s—to be in the same room as Peter Wilenski, who spent some time reforming the Australian public service and attitudes in the public service. The particular problem then was gender inequity in terms of employment opportunity. Wilenski said, and he was right, "To get any change in society, first you must legislate, then you educate."

There would not be anybody in this place now who would argue against equal employment opportunity, but if we took you lot back 50 years ago, you would be arguing against it because you still have this model family. You would have Bill's family of the little woman and the stern man. You would have Mr Pratt saying, "Send the boys out and give them hard labour," and, "They need the old man to come home and give them a smack. They need stern bloody discipline occasionally when the old man comes home."

MR SPEAKER: Order! Mr Quinlan, please direct your comments through the chair.

MR QUINLAN: My apologies, Mr Speaker. We have heard it said that this is the proper way, that these are fundamental principles, that this is the appropriate way. We have heard reference to moral fibre and sanctity in this place. What that does distil down to is intolerance. There is only one difference between the two sides in this argument, that is, acceptance.

Mrs Dunne: You're right and we're wrong, or the other way round.

MR QUINLAN: That's the way you think, Mrs Dunne, isn't it? That is exactly the way you think. It is either black or white. That's the problem. There is one difference in this debate, that is, whether you accept that people are different. Decent people are different from you. Different people have different values. They are still law-abiding people that fit into society, but have different values and you will not accept it. We will.

Mr Cornwell: You don't have to legislate for it, Mr Quinlan.

MR QUINLAN: In your case, Mr Cornwell, I think we do.

MR CORBELL (Minister for Health and Minister for Planning) (9.07): I am very pleased to rise in the chamber this evening to give my support to this very important piece of reform. Mr Speaker, when I first joined the Australian Labor Party—and I made a conscious decision to join the Labor Party; it was not some natural evolution of my

family or anything like that—one of the reasons I chose it was that I took the view that Labor was the party that sought to give all citizens the right and, indeed, the opportunity to participate in society, regardless of their background, regardless of their wealth, regardless of their world view.

Labor wanted to allow all citizens to participate as citizens in society, to overcome the prejudice that would otherwise prevent them from doing so. So, whether it is in relation to your capacity to earn a wage or your capacity to speak English, or because of some discrimination in the community that sees you as some lesser person, Labor's objective has always been to enable all citizens to participate and to participate as equals.

That, fundamentally, is the principle that underpins the legislation that we are debating tonight. It is about allowing all citizens to participate as equals, as valuable contributing citizens in our community. It does not take away anyone's rights. It does not take away anyone's capacity to be a positive and effective contributing citizen. But it does remove the view currently within the law that some types of people, to use the language from the other side, are lesser in the eyes of the law than others. That is what this legislation does; nothing more and nothing less.

My colleagues have outlined quite clearly the issues around the so-called view that children are somehow being harmed by this reform. Mr Speaker, what is important in our society is that we have sustaining, positive, fruitful relationships in our community and that the people who can provide sustaining, fruitful, loving relationships are making an enormous contribution to our society. It should not matter what their sexual preference or orientation is, just as much as it should not matter whether they speak English at home, whether their skin is of a different colour or whether they were born in Australia or not. It is the same thing, Mr Speaker.

The arguments we have heard from those opposite and others who oppose this bill around children are simply a device to hide their bigotry—nothing more and nothing less. They are simply a mask to hide fundamentally their view that some people are lesser citizens in our society. This is an important reform, one which should be supported by the Assembly tonight, and one to which I wholeheartedly give my support.

MR SMYTH (Leader of the Opposition) (9.11): Mr Speaker, the light on the hill is certainly glowing tonight. The speeches of those opposite have reminded me very much of why I joined the Liberal Party. The Liberal Party will walk the walk with you, not just talk the talk. Those opposite are very good at talking the talk, but you never see them out on the street. I have walked with members of the gay community on a number of occasions in the Gay and Lesbian Mardi Gras, but I have never seen anybody sitting opposite in those marches.

Mr Quinlan: Tokenism! We're beyond tokenism.

MR SMYTH: Their defence is that they are beyond tokenism and that it is just a token thing to make the effort and go forth. Is it tokenism that we see very few of you at the AIDS Action Council's AIDS day breakfast? We have seen the Chief Minister there occasionally, but only since becoming Chief Minister. We do not see any of you guys at the president's barbecue. Every time I go up to Joe Tabone and say, "Is there anybody from the Labor Party here tonight?" He says, "Brendan, yet again, nobody from the local

Labor Party is at our function and supporting us where it counts." At the AIDS Action Council's AGM, I see Michael Moore and I see Kate Carnell, but I do not see any of those opposite. It is well and good to be in this place talking the talk, passing the legislation, but when it comes to supporting the community you do not see any of these people out there on the ground.

To her credit, Kate Lundy goes to those functions. To her credit, Ros Dundas goes to those functions. To her credit, Kerrie Tucker goes to those functions. I do not necessarily agree with Ros Dundas and Kerrie Tucker on a whole lot of things, but you have to respect them because not only do they talk the talk but also they will actually walk the walk; they are out there with the community and they are out there listening to you. But what we get from the people opposite—Mr Corbell—is that they do it to hide their bigotry. I am not a bigot. I am proud of who I am, I am proud of the way I support my community and I am proud of the way I participate in all of it as equally as I can. I do not care if you are gay, Christian, Buddhist or Hindu; I am here to represent the entire community and get the best outcomes I can for the community.

I will walk again in the Gay and Lesbian Mardi Gras when I get an opportunity. I challenge all of you to come and walk and, at the end of the year, go to the president's barbecue. I want to see you there on AIDS day and I want to see you at the AIDS Action Council's AGM because, apart from the token efforts that we get in this place, you people do not support the gay community like you should.

You throw it back at us that we are bigots. Last year we passed with you legislation to remove what you would have to call unjust discrimination. The majority of the gay community tell me that the things they are interested in are about decision making powers—on medical decisions, on inheritance and on superannuation—and we should be supporting them on that. We did last year. But that does not mean that you have to support every segment of the community on every desire that they have. Indeed, in talking with lots of members of the gay community, they tell me that it is an element of the gay community that wants this legislation and a large part of that community does not care.

The argument seems to be that we have to remove all discrimination. Why? To discriminate is to make a difference between. Tonight the Treasurer put a bill on the table that discriminates between clubs and taverns. If you are against discrimination, remove the discrimination between clubs and taverns. Let's go back through all the legislation you have passed in the last few years that discriminates one group against the other. We as legislators do it all the time. We discriminate against 18-year-olds because they cannot drink legally till they are 18 years of age. They cannot vote and they cannot buy smokes until they are 18 years of age. If you turn 75, you have to go and have a test to see whether you are still fit enough to drive.

There is all sorts of discrimination. We trot out the word "discrimination" as if to say that if you discriminate against somebody you must be bad. Our job is to discriminate. We are here wisely and justly to pass laws that discriminate on different issues. But the issue here seems to be that you just have to remove all discrimination. Why? Where is the case for doing so? Where is it being made that it has to happen?

The Australian Christian Lobby has come in for a beating tonight. I got the Australian Christian Lobby to come into my office with some of the gay community so that we could sit round and discuss a whole lot of things. Some of it we agreed on and some of it we did not but, as a community, we sat down and did it together.

The people over there point at us and say that we are bigots, that we are all those things that they are afraid of. It is a reflection of them because they cannot look honestly at themselves and ask why or why not. The Chief Minister said, "Have a conscience vote." Colleagues, you've got a conscience vote. Vote according to your conscience. Chief Minister, give your colleagues a conscience vote. You won't because your party does not like conscience votes. Do not come in here and tell us that the light is shining on the hill and we are a bunch of bigots; look at yourself first.

Mr Speaker, we are charged to discriminate; it is our job. We take circumstances and look at them and, on the basis of the evidence presented to us, we are asked to make decisions, and we should. No-one on that side of the chamber has presented evidence that says that this is the best outcome for the child, yet we are attacked on that and it is said that it is only about the child. Of course it is about the child. We have spent most of the morning and a lot of the afternoon talking about the rights of children and how we look after them.

The data is conflicting. Data has been trotted out by both sides. Our surveys say this—Mrs Dunne referred to a couple of things—and your surveys say that. I am going to put the children at the heart of this matter because the children are the ones that it affects the most, absolutely affects the most, and they are the ones that in the main do not have a voice, they are the ones that do not have a say and they are the ones that we are entrusted with protecting—the most vulnerable. In this case they are children who, for whatever circumstance, have been put up for adoption.

Do not sit there and tell me that I am a bigot, because I am not. I will be out there. I will walk the walk. I will go to all parts of my community and I will talk to them, I will walk with them, I will sit with them and I will have a conversation with them, and at the end of the day I will respect them. I will not always agree with them, but I will be there if they want to talk to me.

Let's get to the nub of this matter. The nub of it is that we are being asked to remove some legislation that we are told is discriminatory. Yes, it is discriminatory, as is just about every piece of legislation that we pass that is put in favour of one group over another. In the main, let's face it, most of the legislation this place passes puts one group over another. I have always said that the groups we should legislate to protect are those that we consider the most vulnerable.

Indeed, in the current legislation about adoption there are provisions to protect the children and they are not in any way a slur upon or casting aspersions against the gay community. I look at you and I say that it is not a slur in any way, shape or form. But when children are put up for adoption the agencies have to determine what is the best outcome for them. We have an argument going in our schools about role models for young men. Indeed, the federal Labor leader is talking about having more male role models for young men, for boys, because he is afraid that there is an imbalance,

particularly in schools where there is too much of a female influence and there are not enough young male teachers that boys can have as role models and aspire to be like. We even have the federal Labor Party talking about trying to get some balance back into young lives.

I have just remarried and I have a blended family. The lady that I was married to first was a single mother. I do not discriminate against people. I certainly try not to. But what you have to do when you make law is to look at the purpose of the law. The purpose of the law when it comes to adoption is to guarantee the best outcome for the child.

All we are hearing—it is certainly coming from the federal Labor leader now—is that both male and female role models are needed. It is not always possible to achieve that. It does not happen in whole lots of ordinary nuclear families, or normal families, or conventional families. There is a whole lot of blended families out there and reblended families, single parent families and extended families, and maybe it does not work. But what stops us from aspiring to that ideal? What stops us from aspiring to the ideal that, based on the evidence that I have seen, the best thing for a child that has been put up for adoption is to have a mother and a father?

We have had lots of comments on that. Ms MacDonald said that it was about respect. I am not sure what she said she got bullied for in the yard, but I was short—until I was about seven, I was very short—and I got bullied for being short. I can remember being picked up and used as a battering ram to get into the art room one day: four big kids picked on a little kid and were banging him against the door until Brother Peter stopped it. That happens. It is not acceptable and it should not go on, but don't say we are bigots of some sort because we seek an ideal that is different from yours. It is the very virtue of Australian society that we can actually aspire to something, so do not sit there and call me a bigot.

John Hargreaves said, in answer to something Mrs Burke was saying at the time, that it is symbolic. Don't make it symbolic, John. Come down to the AIDS Action Council picnic, come down to the president's dinner and come and walk in the Gay and Lesbian Mardi Gras and make it real. When I chose to march in the Gay and Lesbian Mardi Gras lots of eyebrows were raised, I have to say, in some of the circles I move in. I am Catholic. I go to my church every Sunday and enjoy it. I move in Christian circles. People said, "What are you doing that for?" I said, "Because they're part of my community and because, with me and that community working together, we can fight things like discrimination, we can spread the message about safe sex and we can work together to make society better." We are all different, but do not tell me that it is symbolic. Symbolism is really cheap. Come and walk the walk, John Hargreaves.

Mr Quinlan talks about being tolerant. I cannot see it, but there must be a chasm or a huge gulf in the middle of the chamber whereby tolerance is apportioned to that side of the chamber. Only those on that side of the table are tolerant, said Ted. I am glad that sitting over there makes you tolerant, because it must have meant that when we were in government we were really tolerant. Suddenly, now that we are sitting over here, we are not tolerant. You are allowed to have your own views. Tolerance is not given to you just because you have joined the Labor Party. If you look back at Labor Party history, you will find that they used to stand for lots of things on which would now say "Gee whiz, look at that."

Let's look at what this is all about. Mr Stanhope interjected at one stage that it is called democracy. According to your consultation, 90 per cent of the people you consulted were actually against this legislation. If it is about democracy and 90 per cent of those that responded said not to do it, I would appeal to your sense of democracy, Jon. Read your report. Listen to what people have said to you.

Mr Stanhope: Happy to see you at the next election, Brendan. Happy to see you at the ballot box, mate.

MR SMYTH: I will be happy to see you at the next election, Mr 84 Per Cent. Some days you get that high. It is a very long way to fall and when you hit rock bottom it can really hurt. I will see you in eight months. I am not worried about the fight, Jon. Let's get rid of the rhetoric. Let's bring this debate back to what it is we are attempting to do in this legislation, that is, to legislate—

MR SPEAKER: Order, Mr Smyth! Relevance, please. Enough will be said between now and October about October's events; just stick to the bill.

MR SMYTH: Mr Speaker, I know I am being bad when I respond to the Chief Minister's interjections, but some days you just cannot resist. This notion that you can remove all discrimination needs to be challenged.

Mr Quinlan: Remove none is the answer; don't bother.

MR SMYTH: There you go. Mr Quinlan, always twisting things, says, "Remove none." The people here voted to remove discrimination with you last year, but you forget about that. You are very selective in the way you pick things out of the ether and you should present a more balanced view. Oddly enough, Mr Quinlan, that would be being tolerant.

Mr Speaker, when it comes down to it, there is a fundamental divide here. My challenge to those opposite would be to stop talking the talk and start walking the walk. I am going to continue doing it. I do not agree with all sections of the community all the time, but when we legislate we should be legislating in favour of those most in need and most vulnerable. In this case, that is the child. On the evidence that I have seen—I acknowledge that there is conflicting evidence—and until somebody can give a definitive report, I believe that we should reject this bill.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (9.25), in reply: Mr Speaker, this government has introduced the Parentage Bill to deal with discrimination based on sexuality that still exists in our laws about family. The Parentage Bill amalgamates existing provisions relating to parentage presumptions into a single piece of legislation. It amends the Adoption Act 1993, which is also about parentage, because it allows for people to become parents through the operation of an adoption order made by the Supreme Court.

Some people have expressed strong feelings about the amendments in this bill. I want to emphasise that we are not making major changes to the law about parentage. What we are doing is simply to remove provisions that are clearly and directly discriminatory. We all know about discrimination and we all know what it is. It is when you make an

assumption about a person based on an attribute that the person has, rather than considering the person as an individual.

We can all think of examples: "Women cannot do labouring jobs because they aren't strong enough"; "Aboriginal families are bad tenants"; "People over 55 don't make good employees." Those are sweeping, discriminatory statements that we all know are wrong. Saying that same-sex couples cannot make good parents is equally sweeping, discriminatory and wrong. I think that we all want a community in the ACT in which people are judged on their own merits and are treated equally. That is why the government is committed to reducing discrimination and that is what this bill is all about.

The bill is not, despite being the focus of much of the debate, about whether homosexuality is wrong. We know that that is not the view of the majority of the people in this community. This bill is not about making groundbreaking changes to the law on families. It is not about so-called social engineering. It is simply about removing discrimination. It is about giving equal treatment under the law to same-sex partners and to their children.

We want same-sex partners to be treated in the same way as opposite-sex partners are now treated. Importantly, we also want to remove discrimination against their children. Children of opposite-sex partners presently have two parents recognised by the law. There is no reason why children of same-sex partners should be treated any differently.

Some people will argue—indeed, both Ms Tucker and Ms Dundas have mentioned it tonight—that this bill does not go far enough and that we should allow for legal recognition of more than two parents for a child. They point to examples where known gamete donors want to be involved in the life of a child born within a same-sex partnership.

While there are many families where parenting roles are taken by adults who are not recognised as parents, this bill is not aimed at legal recognition of those social arrangements. This bill is simply about equality of treatment of same-sex couples and their children and, because it is about treating everyone equally, any changes to the number of parents recognised would apply to all couples and to all families. That would be, I think we would all have to concede, a major change in the way our community dealt with families and it is not part of this government's current policy.

The Parentage Bill extends current parentage presumptions that arise when a woman has a child. These parentage presumptions have been in place for many years. They set up a structure aimed at identifying two people to be responsible for each child. The presumptions are not mutually exclusive, nor are they effective in identifying a second parent for every child. However, they have been widely agreed as a method for the law to identify who may be the parents of a child in most situations and the Supreme Court is given the power to resolve any conflicts over parentage.

If a woman has a child while she is in a domestic partnership, both she and her partner are presumed to be the parents of that child. The bill makes that presumption operate in relation to same-sex domestic partnerships, not just opposite-sex domestic partnerships.

Specific presumptions apply when a woman conceives a child using assisted reproductive technology. By using the inclusive term "domestic partnership", this bill ensures that the presumptions apply regardless of the gender of the woman's partner. This not only removes discrimination against same-sex couples but also redresses the legal position of their children because many of those children have been in the position of having only one parent recognised by the law.

The bill reproduces existing provisions about substitute or surrogate parentage. The Law Reform Commission report, which has been distributed to members, recommends some changes to the law in relation to substitute parent agreements. The government does not propose to make changes to this bill as a result of those recommendations.

The Law Reform Commission, while recommending the retention of legislative provisions making all substitute parent agreements void, proposes that the usual conclusive presumption that a couple undergoing an assisted reproduction procedure are the parents of the resulting child could be altered if there is a substitute parent agreement. Rather than making the substitute parent agreement void, this would give it special validity. That would run directly counter to the notion that substitute parent agreements are void and have no effect.

The parentage order provisions in this bill allow the normal conclusive presumption of parentage to be overridden by an order of the court in that very limited number of cases where, as the result of a surrogacy arrangement, genetic parents of a child may apply to the Supreme Court for an order making them the legal parents in place of the birth parents. After the court order has been made, there is no conflict with the parentage presumption arising from the fact that the child was conceived using assisted reproductive technology.

The Law Reform Commission's second recommendation is, effectively, that in deciding whether to make a parentage order about a child the Supreme Court should be satisfied that the order is in the best interests of the child. The government agrees that the best interests of the child should always be paramount and are paramount. That requirement is reflected in clause 26 of the bill.

The third recommendation of the commission is that the government should provide education in high schools and colleges about substitute parent agreements. The government does not support this recommendation because, again, it runs counter to the provision making all substitute parent agreements void and to the general policy of discouraging people from entering such agreements.

The Law Reform Commission's fourth recommendation is for the names of gamete donors to be included on birth certificates. The issue of providing a record of gamete donors for children conceived through assisted reproductive technology is a separate one from those covered in this bill. It will be considered separately as part of the development of a more general policy relating to the use of assisted reproductive technology.

The sunset clause relating to the operation of provisions allowing for a parentage order under extremely limited circumstances also has not been carried over into this bill.

Importantly, this bill removes the discriminatory provision that has prevented same-sex couples from applying for adoption orders. Once again, this is not about making big changes to the law or about undermining the position of marriage or the family. It is simply about removing a piece of blatant discrimination.

At present, the legislation says that if you are an unmarried couple in a committed long-term domestic partnership and you are two people of opposite sex you can apply to adopt a child, but if you are two people of the same sex you cannot. This is despite the fact that in every case the Supreme Court will give careful consideration to whether or not the welfare of the particular child will be promoted by being parented by the particular couple that has applied. The government considers that there can be no excuse for this kind of outright discrimination in this legislation. Each couple applying for an adoption order should be judged on their own merits.

Apart from removing the discriminatory provisions, no changes are being made to the Adoption Act. The welfare of the child will remain paramount. But it is important to repeat again that the Adoption Act contains a number of safeguards that will not be altered. For example, the adoptive parents of a child must be resident in the ACT. Nobody may apply to be placed on the registrar of persons seeking to adopt a child unless they are persons of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child, including protecting the child's physical and emotional wellbeing.

They must be suitable persons to adopt a particular child having regard to their ages, their education, their attitude to adoption, and their physical, mental and emotional health, particularly insofar as it impacts on their capacity to nurture the child. The welfare and the interests of the child will be promoted by the making of the order.

Section 19 of the act sets out the criteria that the Supreme Court must use in making an adoption order and these provisions will not be changed. The Supreme Court must consider whether any and all the required consents have been given. The Supreme Court must consider the wishes of the child, where the child is of an age and sufficient understanding to express a wish. The Supreme Court must consider whether the welfare and interests of the child will be promoted by the making of the order. The amendments to the Adoption Act in the Parentage Bill we are debating tonight do not alter any of those provisions.

The government's view is simply that there is no sustainable reason to automatically exclude a particular group of people, the non-heterosexual group, from being considered against these criteria as potential adoptive parents. As I say and have said continually through this debate, when I look into myself I cannot find a single sustainable reason that I can use to justify to myself—if I cannot justify to myself, I cannot justify to anybody else—why we should continue or maintain this discrimination. There is no sustainable reason to discriminate against this group of prospective adoptive parents.

The changes to adoption law, similar to the changes to parentage presumptions, will promote the interests of children who are being brought up by same-sex partners but who, under current law, are prevented from having a legal relationship to the significant adults in their lives. Like most other children, they will be able to have two parents responsible for their care. These changes will mean that, in the unfortunate event of the

death of one parent, the children will have another parent with legal responsibility for their care.

The bill defines what is meant by the term "parent". A parent of a child is the child's mother, the child's father or another person who is a parent because of the operation of a presumption about parentage. This creates a parent and child relationship between a child and a person who is neither the child's father nor the child's mother.

To conclude, if we do not make the changes that we have been debating tonight, we will be sending a message—nobody can deny this—to same-sex couples and to their children that they are somehow second-class families and second-class citizens. If we do not make these changes, we will be maintaining a legislated piece of discrimination against a group of people on the basis of their gender or their sexuality. That is, quite simply, an unsustainable position.

I understand that some people feel very strongly about the adoption issue: it is obvious; I know it. It seems clear however, as I indicated earlier, that the notion that homosexual people generally are unsuitable to be parents is based on the idea that homosexuality itself is somehow wrong. I cannot avoid the conclusion, having listened to some of the debate and some of the opposition to the proposals the government has put tonight, that there is a notion implicit in some of the opposition that somehow homosexual people are unsuitable to be parents.

That is not the view of the majority of people within our community. Our society today—our Canberra society, our Canberra community—is open to accepting a wide range of family types provided that they provide love and security for the children within them. The bill recognises that such loving families are built by people of all kinds. I thank members for their support of the bill. I commend the bill to the Assembly.

Mrs Cross: I move that the debate be adjourned, Mr Speaker.

MR SPEAKER: The debate has been closed, Mrs Cross. As the debate has been closed, it might be more appropriate to consider moving that motion when we move to the detail stage.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

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

Question so resolved in the affirmative

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MRS CROSS (9.41): I move amendment No 1 circulated in my name *[see schedule 1 at page 164].*

I must apologise to the Assembly: I should have adjourned the debate before the Chief Minister closed it. He did give me an opportunity to do so, but I did not. My timing was off and I apologise for that. I had intended to adjourn this debate to allow for more community consultation because I felt that this bill was being rushed through but, given that we have now voted on it in principle, I would like to talk to the amendment that I have circulated asking that we allow six months after the notification day for this bill before the bill is put in place. Mr Speaker, can I speak to that?

MR SPEAKER: Yes.

MRS CROSS: I had the intention today, Mr Speaker, of rising to offer partial support for the Parentage Bill 2003. I wanted to say, Mr Speaker, that I was fully supportive of the establishment of one parentage act that ties together all existing parentage legislation.

The parentage legislation is extremely complex and highly contradictory. This arises out of the fact that parentage is determined on a number of presumptions, some of which supersede other presumptions and some of which do not. Presumptions can be either conclusive or rebuttable and there are clauses dealing with these conflicting presumptions. Simplifying all these into one bill is certainly more beneficial to the community than having parts located all through our legislative maze. The consolidation of the Artificial Conception Act 1985, the Birth (Equality of Status) Act 1988 and the Substitute Parents Agreement Act 1994 is beneficial in that it ties together three complex pieces of legislation whilst making little substantive change.

The main substantive changes that this bill is seeking to implement are the extension of the definition of “parent” and the removal of provisions that prohibit same-sex couples from being able to adopt children. I am fully supportive of the first intention of the bill as it is at present. Extending the definition of “parent”, and thus “grandparent”, “uncle”, “aunty” and “cousin”, will ensure that no child is disadvantaged by having a legal connection to only one parent.

This bill will remove the inherent disadvantage that children of same-sex couples have of being legally connected to only one parent. This is the bill’s great advantage. It is removing the inherent inequity forced upon children who have no control over their parents’ relationships. I applaud the Chief Minister for removing this inequity. All children deserve to be afforded the same rights as their peers and this bill should ensure that this occurs.

Turning to my amendment, this bill was introduced in November last year and we are debating it less than three months later. The concerns that I have and those that have

lobbied me in the community are that there has not been enough time for such a far-reaching, broadly encompassing bill with such significant social ramifications to be given proper consideration. Three months is not enough time to meet constituents, do the relevant research and reach an informed conclusion, especially given the intervening Christmas and New Year break. But I can count and I knew that this bill was going to go through with the support of the Greens and the Democrats.

As much as I wanted to have more time to consult with the community and allow the community to consult with me, I felt that the next best thing to do was to put through an amendment that allowed six months after the notification date of this bill for the government and the interested parties to get together to try to formulate a clearer and more acceptable path, although I do not feel that a fully acceptable path will ever occur in its entirety.

My concern with this debate has been as follows: at the moment in the gallery we have two very strong lobby groups. Some will call them right, some will say that they are wrong, some will say that they are superior, some will think that they are inferior, some will think that they are better, some will think that they are worse, some are to the left and others to the right, both are passionate and both have their own belief system.

I would like to pay tribute to Jim Wallace and Liz Keogh. Both represent people who have a passionate belief in what they feel is the right way to go and the path that they feel is the right path to follow. I know both of them and know that they are both fine people. It concerns me to hear comments from people in the gallery that they do not want to hear from people who have an opposing view or a differing view. It also concerns me to hear comments from members of this place that consider this bill is not important, because it indicates to me that we have diametrically opposed views like those that existed between black and white people and with regard to the groups that migrated to this country and were treated like lesser citizens because they did not have blond hair and blue eyes, spoke different languages and ate smelly food that was different from that of the white Anglo-Saxon Protestant Celtics, although I think they would have looked funny to the Aborigines when they got here too.

My concern with this bill in assessing my position on this bill was not that I had a fundamentalist position, because I have never liked to discriminate against people. One of the things that I admire about the Chief Minister is that he has an open mind about ethnic groups in this city and is highly regarded by these ethnic groups. That is one of the things that I am on record as having said that I respect about him. I have never seen one iota of racial discrimination from this man towards the community.

However, I do understand the position of groups like the Australian Christian Lobby. I understand their sense of family values. I understand that they believe that a family is a mother, a father and everything else that comes below that. I have spent a third of my life living in countries where mothers and fathers have represented a family. I have also lived in countries where that has not always been the option and where there have been two women or two men, not necessarily gay, in a family bringing up a child.

I am in the privileged position as a legislator of having been privy to information about heterosexual families which have not always done the right thing by their children. I have also been in the privileged position of seeing heterosexual families being

outstanding parents to their children. I do not believe that heterosexual people have the monopoly on perfect parenting as I do not believe that human beings in general are all perfect parents or are all perfect human beings.

This debate has caused me great turmoil, probably more so than the decriminalisation of abortion, which caused me personal heartache in other ways, as many people in this gallery would know. I have found it very difficult because my constituents are very divided on this issue. I have been told that, as an Independent, every vote that I make in this place is, in fact, a conscience vote because I make that decision based on the merits and I assess the issue on its merits. I do not have a party to support or sometimes hide behind and say, "I will let the leader take the fall on this one and just vote according to the way the leader votes." This issue is about the way that I feel I should vote.

I can assure you that it has caused me grief and turmoil because members of my office and my inner circle have a very differing view from mine. They are not bad people; they are fine people. They have their own set of principles and belief system. Again, I stress that when I hear people from the gallery saying to the Leader of the Opposition, because of his attendance at AIDS Action Council events that they do not want him, they must stop and think that when they say something like that to whomever they are no different and they are no better than those that are discriminating against them and their ability to be parents.

We should not do that. If we are here to eliminate discrimination, if we are here to try to introduce equity into a family situation or society as a whole, we cannot be as bad as others that are discriminating against us. Therefore, we should be careful, take a step back, stay calm and keep people on our side. I think that many of you will know that I have as much reason, if not more, to have concerns and maybe be angry at some of those on the other side for what I went through the year before last, but I do not. I am here to represent the interests of the community and, in order to do what is right for the community, I have to put my personal feeling aside and assess and issue on its merits.

This issue has merits on both sides, because I respect Jim Wallace and I respect Liz Keogh and I respect both groups they represent. So what do I do? I have to make a decision that is best for the community and the decision that I feel is right. I have to examine my conscience. I have to examine what I feel is the right and moral thing for me to do, which is one of the reasons I have circulated this amendment in my name asking that there be a six-month notification date from the time this bill goes through to allow these two groups to come together, to allow the government time to bring these people together, to try to find some middle ground, if at all possible. *[Extension of time granted.]*

In this instance, this is not an easy position for me, but I am not saying it should be easy: it is really difficult. But tonight I have had the fortune of meeting a lovely young baby called Ethan and his parents. I was at dinner with some people in this place and I was inspired by the love that I saw this child receive from those parents. I have to say that I have always felt that no individual has a monopoly on being ideal in any situation. But having seen heterosexual people parenting, having seen gay people that are friends of mine in the community, it has been a dilemma for me.

Having to choose between the Jim Wallaces of this world and the Liz Keoghs of this world, whom I both respect and admire, is a really difficult thing for me to do. I do not want to have to choose between them, because they are both good people and they both represent groupings of people that live well in this community. They do not break the laws, they live a good life, they are good with their families, they have their own children, they are respectful and they have their own belief system.

Who am I to say one is inferior or superior to the other? That is not my role. As a legislator, I am meant to make a decision that I feel is best for this community, that I can live with and that I can look back on in years from now, crossing my fingers that when Ethan grows up he will say, "You know what, you made the right decision, Helen Cross. I was so happy with the parenting I got that you made the right decision back then." If I do not make the right decision, whoever gets re-elected can repeal the decisions made in this place tonight.

My vote was irrelevant here because, as you know, the government had the numbers to get this bill through. I felt that it was important that whatever I had to say reflected my conscience and reflected my personal views on this subject. I do not want to disappoint people. The lobbying that been done of me and my office has been interesting. Some of it has been light and some of it has been heavy, to the point of receiving death threats and other threats—I understand that the same has happened to the Chief Minister—because people were not happy with the way I might vote.

At this point, I would like to mention that Mrs Burke, in her speech earlier, referred to how the vote would go down. Mrs Burke never came to consult me and ask me how I was going to vote. In her speech, she said that the vote was going to be 11 to six and the government had the numbers. You never asked me, Mrs Burke. Until I got into this place tonight, I was not even sure how I was going to vote. I had every intention of seeking to adjourn the debate on this bill because I felt that there had to be further consultation. The arrogance of Mrs Burke in making a decision on how members of this place were going to vote is typical of those members of that side of the chamber who do not bother to check with members on this side and who put all members of the cross bench in the same category.

Mr Speaker, I have moved the amendment circulated in my name. I hope that members will support it because I truly feel that someone has to moderate both these groups and sit them down and say, "Look, we have three adoptions in the ACT a year. There are strict guidelines in order for anybody to qualify to adopt a child. In order for those guidelines to be met, people have to jump through hoops and have to be considered worthy of parenting the child." I believe that the system we have in place in the ACT at this stage is a good system. If legislators in this place find that that system is flawed and lets the community down, it is up to the community to decide whom they vote into this place so those laws can be changed or repealed.

I commend the amendment to the Assembly.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (9.56): The government will not support Mrs Cross's proposal that the commencement date for this legislation, if it is agreed to this evening,

be deferred by six months after the date of its notification. I listened with interest to what Mrs Cross had to say. Those who have responded to the significant lobbying that has been part and parcel of this debate have certainly been pulled and pushed from pillar to post. For some, this has been a difficult decision and issue.

Mrs Cross made the point that there will continue to be much debate and some dissent in the community about the decision that will be taken tonight. If the bill passes through the chamber tonight I do not believe this issue would be well served by putting off its commencement date for a further six months. Despite many of the comments that have been made, the government has consulted exhaustively in relation to these proposals. These reform proposals had their genesis 23 months ago. For a full two years we have consulted on a raft of proposed changes relating to the removal of discrimination against gay and lesbian people in the ACT.

Almost three years ago this government was elected on a platform and a policy of removing all legislative discrimination against gays and lesbians in the ACT. We identified more than 70 pieces of legislation containing legislative discrimination and we embarked on a process to remove that discrimination. This has been an open, patent and public process. Some people opposed parts of it along the way and some members of the community made significant representations in relation to it. We made our decisions and we incorporated our policy and our views in legislation. This legislation has just received the in-principle approval of this Assembly and we are now debating the detail stage.

The government is of the view that nothing will be achieved by putting off for a further six months the commencement of this legislation. In my view nothing would be gained if we allowed consultation on legislation that had already been enacted. The government accepts that there will be some disappointment and some disagreement with the decisions that have been made relating to adoption and that that will continue. However, it is important that we accept that this will be the law in the ACT. We must accept that and move on in the firm knowledge that we have removed unsustainable discrimination against a group of fellow citizens.

MR STEFANIAK (9.59): The opposition supports the amendment that was moved earlier by Mrs Cross. If the commencement date of the bill were adjourned, the government might come to its senses. However, given the views of government members, I doubt whether a period of six months would make any difference. We can only hope and pray that it does. I refer to one other issue about which government members might be aware. Some Scandinavian countries have very liberal laws relating to same-sex partnerships. There are registered gay relationships and even gay marriages, but they do not permit same-sex couples to adopt children.

I do not know whether the government has considered that aspect. Perhaps it could take on board some of those issues over the next six months. A six-month adjournment of the commencement date of this legislation would give everyone a chance to look at the evidence and consider various views. The opposition is happy to support this amendment. The Liberal Party remains firmly opposed to this bill. If this amendment were agreed to it might not necessarily change our position, but it would give the government and others an opportunity to rethink these issues. I hope that some common sense prevails.

MS DUNDAS (10.01): I do not support Mrs Cross's amendment. We do not need to delay the implementation of legislation that will be passed tonight. As the Chief Minister said earlier, debate on same-sex parenting and the other issues that are dealt with in this bill has been going on for a long time. I do not believe that a six-month delay would change people's positions. If the commencement date of this legislation were adjourned for six months we would still have discrimination.

Same-sex couples with children would not be able to take up their parenting rights. Children would suffer for an additional six months as their parents would not have legal responsibility for them. I am proud of what has occurred tonight. Some members of this Assembly have made some hard decisions. It is time that we implemented this legislation, continued our law reform process and removed discrimination against gay couples in the ACT.

Question put:

> That **Mrs Cross's** amendment be agreed to.

The Assembly voted—

Ayes 7		Noes 10	
Mrs Burke	Mr Smyth	Mr Berry	Ms MacDonald
Mr Cornwell	Mr Stefaniak	Mr Corbell	Mr Quinlan
Mrs Cross		Ms Dundas	Mr Stanhope
Mrs Dunne		Ms Gallagher	Ms Tucker
Mr Pratt		Mr Hargreaves	Mr Wood

Question so resolved in the negative.

Amendment negatived.

MR STEFANIAK (10.05): I move amendment No 1 circulated in my name *[see schedule 2 at page 164]*.

Under section 19 of the Adoption Act the court has some discretion in awarding and granting an adoption. Subsection (1) refers to the fact that adoption orders shall not be made if a child has not attained the age of 18 years, unless a certain number of things occur. Section 19 (2) states:

> In deciding whether or not to make an adoption order, the Court shall have regard to—

effectively, that means the court must have regard to—

> (a) where it is appropriate given the age and understanding of the child—the wishes of the child…

In other words, if a child is old enough to form a view and to have an input, that has to be taken into account. Under section 19 (2) (b), the court has to take into account:

(b) any wishes expressed in an instrument of consent, including wishes as regards—

(i) the racial or ethnic background of the proposed adoptive parents;

(ii) the religious upbringing of the child after adoption; or

(iii) whether a single person might adopt the child.

The court has to take into account all those things. If a child is given up for adoption the natural parents can express their wishes—and those wishes have to be taken into account—in regard to the racial or ethnic background of the proposed adoptive parents, the religious upbringing of the child after adoption and whether a single person might adopt the child.

My amendment would add a fourth category: the sexuality of the proposed adoptive parents. This amendment is necessary now that the Assembly has agreed to the in-principle stage of the legislation. The effect of the Chief Minister's legislation would be to permit a new class or classes of people to adopt children. If this amendment were not agreed to it would be a breach of rights and result in bias in favour of one group. Parents have the right to express an opinion and a desire about how their children should be brought up. For example, parents might be strict Catholics, Muslims, Buddhists or whatever and want their children to be brought up in that faith. The court has to take into account those wishes. Chinese parents might like their child to be adopted by another Chinese couple.

Some parents might not want their children to be adopted by a single person, for example, Uncle Fred. They might want their children to go to a married couple. The same thing could apply in relation to the sexuality of proposed adoptive parents. Some parents might have no view in relation to that issue, but others might want the court to take that into account. As the in-principle stage of the bill has been agreed to, it is essential that members support my proposed amendment. I commend that amendment to all members.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.09): The government does not support this proposed amendment. Mr Stefaniak referred earlier to section 19 (2) (b) of the Adoption Act 1993. The act requires the Supreme Court, when deciding whether or not to make an adoption order, to take notice of any wishes expressed by the relinquishing parents in the instrument of consent to adoption. At present, as Mr Stefaniak said earlier, the section mentions three specific examples about which relinquishing parents could express their wishes.

As the law stands, relinquishing parents might be invited to express a view about the racial or ethnic background of potential adoptive parents. Relinquishing parents might be asked whether they wish to express a view about the religious upbringing of a child and about whether a single person might adopt the child. Those are the three examples that are given. It must be remembered that this provision is inclusive in nature. These are only examples of the sorts of things about which a relinquishing parent might express a view. Mr Stefaniak said that a provision in a reasonably old piece of legislation refers to

racial or ethnic background, religious upbringing, or to whether a single person might adopt a child.

Mr Stefaniak said, in the context of the debate, “Let us now add to that sexuality.” He wants us, quite starkly and explicitly, to include that provision in the Adoption Act. So a relinquishing parent might be asked, “Do you have a view on the sexuality of a potential adopting parent?” That is a retrograde and unnecessary step. Let us look at the context of that provision. What have we, as a legislature, just done? We have just agreed to remove a provision that discriminates against a group of people—discrimination that is based solely and entirely on gender and sexuality.

Opposition members are saying, “This parliament has just agreed to remove sexuality as a bar to the right to adopt. We want to reintroduce the notion of sexuality in the Adoption Act.” It wants to do that almost by subterfuge. It wants to send out the message that that factor should be taken into account when determining whether or not a person should be allowed to adopt a child. That is contrary to what we have just done. It is contrary to the whole focus and thrust of the reform process in which we have been engaged for the past two years, namely, to remove from all our legislation language that is not inclusive of same-sex couples. That is the process in which we have been engaged.

We have been engaged in a process of removing legislated discrimination against gays and lesbians in this community. The opposition has now put forward a proposal to reintroduce it in another guise, at the very moment that it has been removed. The process in which we have been engaged is removing discrimination based on sexuality. As I said earlier, the opposition’s amendment is nothing more than a subterfuge. At the same time as we agreed to remove from the Adoption Act discrimination against same-sex couples, we receive a proposal to reintroduce it. The process in which we have been engaged—the law reform project that we are concluding this evening—is about removing discriminatory elements from a raft of legislation.

At the conclusion of this debate the Sexuality Discrimination Legislation Amendment Bill will become law. This legislation will remove discriminatory elements from a dozen or so pieces of legislation. This legislation deals with parenting aspects, the Adoption Act and the removal of discrimination from that act. We are not involved in a rewrite or review of the Adoption Act. We made a conscious decision not to do that. This project, which is divisive and difficult, has roused some passion within the community. If we were reviewing the Adoption Act, we would want to determine whether or not to retain those other provisions in section 19 (2) (b). We certainly would not be looking to add a fourth provision.

MRS DUNNE (10.15): It is breathtaking in these circumstances that the government is opposing the opposition’s amendment. The Adoption Act gives relinquishing parents the right to make some decisions about the ongoing welfare of their children. The Chief Minister referred earlier to three examples in that act. What he said is incorrect.

Mr Stanhope: It is an inclusive provision. They are examples.

MRS DUNNE: They are not examples; they are provisions in the legislation. They are not explanatory notes or things that may or may not be taken into consideration.

Mr Stanhope: It is not exclusive.

MRS DUNNE: These are the things that people might opt to do. People who relinquish a child for adoption do not do that lightly. Obviously they do that because they do not believe—for whatever reason—that they have the capacity to work in the best interests of the child who is being relinquished. However, they might have some passionate views about some issues. If I were a Hindu I might want the child that I was relinquishing to be raised as a Hindu by an Indian family, as that might be of cultural importance to me. It means that I have the right—I might waive that right but I might also exercise it—to discriminate on the basis of the racial, ethnic or religious background of the person to whom I might want to relinquish my child.

I might be a single woman who is putting up her child for adoption. As a single woman I might say, "I cannot provide in the best possible way for my child, therefore I would like somebody who is in a better position to do that." As a single woman I might decide that it is entirely unsuitable to pass on my child to another single person. The government is stating that that discrimination is permissible. Any member who believes that we have done away with discrimination in the ACT today is an absolute fool. We have not done away with discrimination in the ACT.

What we are doing is depriving people of the right to relinquish their children, for whatever reason. We are taking away their right to make decisions about the future of their children. That might mean that even fewer children in the ACT will be relinquished for adoption. Some parents might go interstate because they will have some control over whether or not their children go to a heterosexual couple.

MS TUCKER (10.18): The Greens do not support this amendment. Basically, section 19 (2) of the Adoption Act states:

> In deciding whether or not to make an adoption order, the Court shall have regard to—
>
> (a) where it is appropriate given the age and understanding of the child—the wishes of the child…
>
> (b) any wishes expressed in an instrument of consent, including wishes as regards—

and the section then lists several examples, but it is certainly not an exclusive list. It would have been better if we deleted everything after section 19 (2) (a) and (b). So the court shall have regard to the wishes of the child and any wishes could be expressed in an instrument of consent. We do not need to include the list that is referred to in that section. I do not think it is particularly useful to have that list. That is something that we could look at later.

The Chief Minister said earlier that the government did not want to review the whole act at this point in time. I believe that it is not useful—in fact, it is quite dangerous—to have a list such as that in this legislation. We can have regard to the wishes of a parent and we could cover a wide range of issues. The examples that are included in the act do not represent an exclusive list. If we added sexuality to that list it would have a negative

effect, especially when we, as a society, are trying to deal with the stigma that is being placed by the Liberals on gay people in our community. Clearly, that is where the Liberals are coming from. I oppose any additions to that list at this point.

MS DUNDAS (10.20): I do not support Mr Stefaniak's amendment, which will result in shifting the government's general policy of discrimination to a policy of discrimination by individuals. I would like to counter some of the points that were raised by Mrs Dunne. She talked about the ongoing welfare of children and parents who have passionate views about what happens to a child who is given up for adoption. She then said that, if she were a Hindu, she would want to ensure that her child was raised in that culture.

Sexuality is not a culture. If we dismiss sexuality by putting it on a list and saying, "Somebody can discriminate if they do not believe that adoptive parents who are in a same-sex relationship will be good parents or be able to look after a child," we will be continuing discrimination. We have already debated this issue. We need to move on. I understand the point that was made earlier by Mr Stefaniak. We need to examine the relationship between genetic parents and their children and the rights of both those parties. However, we have already established that those issues are broader than the scope of this legislation. That is an area that needs a lot more work.

This amendment implies that same-sex parenting should be thought of as less desirable than parenting by heterosexual partners. That is contrary to the intention of the bill that has already been passed. Mr Stefaniak should have adopted the principles contained in the Western Australian legislation, which state that a court may take into account the wishes of the surrendering parent. That legislation does not include a list that specifies particular grounds but it enables a parent's wishes to be heard. Mr Stefaniak's attempt to include a specific reference to a person's sexuality as grounds for preventing adoption is discriminatory and unnecessary. We have other important issues that must be debated in the future. I cannot support this discriminatory amendment after all the work we have done this evening to eliminate discrimination.

MR SMYTH (Leader of the Opposition) (10.23): Earlier government members talked about being tolerant. Why can we not be tolerant and include provisions in this legislation that would enable a parent or the parents surrendering a child for adoption to have a say in their future? The law already states that we have to take into regard things such as racial or ethnic background, religious upbringing or whether a single person might adopt a child. At present this law does not list those things as examples. If we refer to other pieces of legislation we see that those examples are given.

Members opposite talk about tolerance, but when somebody suggests something that they do not agree with we suddenly find that they are not at all tolerant of those views. It is reasonably logical that any parent surrendering a child, for whatever reason, should have as much say as possible in that process. It cannot be easy for parents to surrender a child. They would want to have some certainty about the future of that child and they would want to know where he or she was going. It is perfectly reasonable for Lebanese Muslims to want their child to be adopted by a Lebanese Muslim family so that that child is given the cultural and religious education that he or she deserves. If people were really tolerant in this place that tolerance would flow both ways.

MR STEFANIAK (10.24): Members appear to be somewhat confused. Earlier I tried to refer to legislation that contained the sorts of examples to which members have been referring. Tomorrow I will table a document relating to the gaming act and that will give members some idea of the provisions that are required in this legislation.

Ms Dundas referred earlier to legislation in Western Australia. She said that the court in Western Australia takes into account the wishes that are expressed by relinquishing parents. As I have not examined the Western Australian act I accept what the member said about that issue. Our act, which is quite specific, lists three examples. If relinquishing parents express a wish when giving up a child for adoption, the court has to take that into account. The Adoption Act lists the following three examples:

(i) the racial or ethnic background of the proposed adoptive parents;

(ii) the religious upbringing of the child after adoption; or

(iii) whether a single person might adopt the child.

All I wish to do is to add a fourth example—sexuality. It is illogical for any member to oppose this amendment. I cannot remember the reasons given by Ms Tucker for opposing this amendment. If she and other members oppose this amendment they will be depriving relinquishing parents of the right to have a say in the future of their children.

Mr Stanhope: On a point of order: that is simply not true. The member is asserting that we are denying relinquishing parents the right to make their wishes known.

Mrs Dunne: On the point of order: which standing order are we talking about?

MR DEPUTY SPEAKER: Order! I will deal with one point of order at a time.

Mrs Dunne: The Chief Minister is debating the issue. This is not a point of order.

MR DEPUTY SPEAKER: What is the point of order?

Mr Stanhope: Mr Stefaniak suggested that government members who are opposing this amendment are denying relinquishing parents the right to make their wishes known on any subject at all. He simply does not understand the provision.

MR DEPUTY SPEAKER: There is no point of order. The Chief Minister will resume his seat.

Mr Stanhope: It is an inclusive, not exclusive, provision. The member is wrong.

MR DEPUTY SPEAKER: Order! There is no point of order.

MR STEFANIAK: I disagree with the views expressed by the Chief Minister. By not supporting this amendment government members are depriving relinquishing parents of their rights. That is painfully obvious. We heard a lot of pious talk about people's rights and about removing discrimination. However, by not going down this path the government is promoting discrimination. This government is all about ideology rather

than fairness or enacting good laws. It is obvious that government members will not support this sensible amendment. They have their own convoluted ideas for not doing so. They are making a simple amendment needlessly complex.

On the basis of what government members are saying, it would be far more logical if we adopted the Western Australian legislation and deleted paragraphs (b) (i), (ii) and (iii) from section 19 subsection (2) of the Adoption Act. If the government does not do that it would be eminently sensible if it agreed to my amendment.

Ms Dundas referred earlier to Western Australian legislation, which has been in place for some time. While wading through a lot of information relating to this issue I recall reading something about reverse discrimination. Some agencies are scared about not sending kids to same-sex couples. They fear that they might be branded as being discriminatory. That is something that should be avoided here. I accept that my proposed amendment is quite different from the provisions in the Western Australian legislation. However, it is consistent with what was referred to earlier in debate and with what has been referred to in the detail stage.

It is obvious that my amendment will be defeated and that this bill will become law. However, I commend my amendment to members. This government has not removed discrimination in the ACT. By not voting for my amendment it will be adding to discrimination in this territory. I will not plead with members to vote for my amendment as I know that they will not change their minds.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

Question put:

> That the bill, as a whole, be agreed to.

The Assembly voted—

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

Question so resolved in the affirmative.

Bill agreed to.

Privileges—Select Committee
Membership

MR DEPUTY SPEAKER: Mr Speaker has been notified in writing of the following nominations for membership of the Select Committee on Privileges 2004: Ms MacDonald, Ms Tucker and Mr Cornwell.

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

> That the Members so nominated be appointed as members of the Select Committee on Privileges 2004.

Sexuality Discrimination Legislation Amendment Bill 2003

Debate resumed from 20 November 2003, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (10.35): Mr Speaker, I will be a little bit briefer than I was with the last bill. I think it would be sensible. This bill amends some 26 acts. In some respects it is not very dissimilar from one or two of the bills that the government brought in in the past, about 12 months ago. No-one has any problems with it. Indeed, Mr Jim Wallace—and I acknowledge his presence in the gallery this evening and his very sensible contribution to this debate—and a lot of other people, his colleagues, made a specific point that, in the previous round of negotiations and talks, they were quite comfortable with a lot of what was done.

So there is a lot of bipartisan support here, even in the various groups who passionately believe one way or the other about issues such as this. I think that speaks volumes for what a mature community this is and what a mature community we are. It also indicates that, where there are differences, we really do need to give those a lot of consideration.

Mr Speaker, this bill does a number of things. I am not going to regurgitate what the Chief Minister has said. In many instances, it simply makes changes to bring legislation into line with legislation the government passed earlier regarding domestic partnerships. The opposition had a debate at that time. We were very concerned about removing the

definition of marriage and a number of other definitions from that legislation, but we did not think there was much of a problem with the substance of what was done.

MR SPEAKER: You would not be about to reflect on a vote of the Assembly, would you?

MR STEFANIAK: No, I will certainly try not to do that, Mr Speaker, but fundamentally this follows on from that earlier legislation, so I refer to that debate simply to show what this bill is doing. We do not have any problems with that and I think few people do.

However, there are a number of areas in this bill where we do have some problems, where other people have problems or where matters are being drawn to our attention. I will speak about those at greater length in the detail stage. I will just concentrate on some of those issues now. Some problems have been mentioned to me in relation to the Commonwealth Evidence Act provisions being lifted. There are some real concerns about that. I think the government should look more carefully at that matter, to take into account the concerns expressed by a very experienced lawyer and practitioner in Canberra.

Some further concerns were expressed in the scrutiny of bills report which, admittedly, I did not necessarily see to start with. Again, because of those, I do not think that that part of the bill should be supported. More work has to be done there and perhaps generally in relation to that whole field of provocation. There are also some obvious problems in relation to the baths act. I will speak in greater detail on that later. We have amendments to that.

There is one other area which the opposition looked at very closely and that is gay vilification. We do not have an amendment for that clause, which is clause 66 of this bill. This bill adds that clause to a list which is currently in the Discrimination Act. That is something at which we all need to look very carefully. I think we should avoid letting our ideological views run rampant by creating legislation that is never going to be used. That has been the case, for example, since the racial vilification legislation came in. That shows what a great, tolerant society the ACT has. I can recall when that law was made and, yes, a lot of ideology was involved and a lot has been said about it.

There are a lot of other laws and offences that can be used and should be used which would negate the need for such legislation. When no convictions have been made, no offences have occurred and no charges have been laid under a piece of legislation, we should look at it. Remember, that legislation has been there since 1991. Now, vilification on the grounds of sexuality is being added to it.

I do not have amendments to the bill but I make those points because the opposition has decided that it should. Vilification laws are something I do not particularly like because we do have other laws in this country, such as the Crimes Act, under which, if people go over the top, they can be charged for whatever particularly nasty thing they do. I know the government often makes the point that we do not need these laws.

Interestingly enough, in response to my concerns about getting rid of sections 18 and 30 of the baths act, one of the comments made was, “If anything goes wrong, they can be charged under the criminal law.” You cannot have the argument both ways. If that is the

case, why get rid of another law that has served the test of time? If you use the argument that the government is using, why on earth would you not get rid of, say, racial vilification and sexual vilification laws, or whatever, if they have never been used and if there are other laws which have stood the test of time and have been very, very effective.

That is probably something that needs looking at in greater detail. However, in terms of this particular act, all right, it will add vilification on the grounds of sexuality to what we have already. I strongly suspect, and I strongly hope, too, that it will never be used. I think we do need to look at it again, if it is not used. I thank God we do not need it and that charges do not need to be laid under this legislation, because of the nature of our community. Long may it be so.

There are a number of issues in this bill about which we do have concerns. Generally though, most of the legislation is simply bringing these acts into line with other legislation introduced some time ago. The opposition will be supporting the bill in principle.

MS TUCKER (10.42): This is another step in the introduction of the package that has been under way for most of the term of this Assembly. Ms Dundas and I raised the issue earlier on. I remember attempting on a couple of occasions to make some of these changes, but my attempts turned out to be out of order. Then Ms Dundas moved a motion that was in order.

I have a few comments about this legislation. It is very important to remove the provocation defence as a defence for murder. This change would not prevent someone using the defence that they have been a victim of violence at the hands of the murdered person on previous occasions and that this was somehow a last straw. This remaining defence should only be used in very specific circumstances, for example, in a domestic violence situation.

I also want to mention the serious vilification provisions. These are worded carefully so that they are about serious public inciting and not about the discussion of issues, academic or artistic exploration and so on. The maximum penalty for the worst offences is very high. We have to remember that the end result of vilification can be murder and we should bear that in mind when looking at the maximum penalty. I would say that some of what Mrs Dunne said tonight was getting close to it.

It will be essential to the effective enactment of all of the amendments that have been part of this reform process that there is an active education program. Many of the amendments concern administrative decisions in areas where the work does not usually deal with sexuality. Medical administrators and medical professionals need to know that they must take into account same-sex partners' views. The courts will also be dealing with a number of matters amended by this bill. Court workers and magistrates should perhaps know, through keeping track of law reform, but an education effort will ensure that the laws are applied by all staff there.

There is the community affected. The conduct of this legislative review, assisted particularly through the efforts of good process, has raised awareness of the changes under way. However, it is important that, as much as possible, there is another effort from government to advertise the changes. The experience in Western Australia has been

that, without the active education of people who benefit from the changes, as well as those who administer the areas where discrimination has been removed, the changes do not have an effect.

MS DUNDAS (10.45): The ACT Democrats are also very proud to support this legislation. It builds upon the work of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002. It also amends a further 26 pieces of legislation, mainly to include the new definition of domestic partners that was not changed in the first stage of the reforms that were passed earlier last year. I am pleased that there are still people here in the Assembly to hear this debate tonight because we are doing much more today than just allowing same-sex couples to adopt children. We are actually making the lives of queer people in the ACT community better, and making the lives of the entire community better, by removing this legislative discrimination.

The Australian Democrats have spent many years standing up for the rights of lesbian, gay, bisexual, transgender and intersex people and I am glad to be part of this continuing push to promote equality among all Australians. It was in August 2002 that this Assembly debated a motion that I tabled on removing discrimination against gay, lesbian, bisexual, transgender and intersex people. That motion formed the basis of the government's community consultation, and a number of the specific initiatives in this bill follow directly from those ideas and the debate that we had in 2002.

This particularly includes the removal of the homosexual advance defence and the introduction of anti-vilification laws to protect members of the community from people inciting hatred or violence. Mr Stefaniak has spoken briefly on his amendments that oppose the removal of the homosexual advance defence and the introduction of anti-vilification laws, but I will discuss his objections when we get to the detail stage.

I also wanted to take a minute to talk about the initiatives that did not make it into this round of legislation. The government has decided not to proceed at this time with the registration of relationships. As I have said repeatedly, a registered relationships scheme has just been introduced in Tasmania which allows all couples, whether they are the same sex or otherwise, to register their relationships with the state government. This process allows them immediate and certain access to all the partner provisions of Tasmanian law.

It is unfortunate that Tasmania has been able to proceed with this innovative program, which is about allowing all couples, regardless of gender, to have their relationships formally recognised by government, but the ACT has not yet been able to make this step. Registered relationships will allow domestic partners to have certainty and proof of their relationship, as well as allowing them the benefits of their partnership immediately without their having to wait an allotted time.

I believe that the ACT must move towards implementing a registered relationship scheme and we must do this as soon as possible. I note that it was part of the ACT Labor platform at the last election, but we have not seen it delivered as yet. When Mr Smyth spoke earlier about issues of concern to the queer community, he failed to mention registered relationships, a fundamental issue that is continually being brought to my attention as something that we do need to fix, so that couples in our community can have their relationships recognised by law.

I also want to talk about transgender and intersex law reform. Throughout this debate, we have been talking about GLBTI people. However, most of the reforms we see in the bill before us are more about the GLB than the TI. The ACT government's community consultations and legislative audit identified a huge number of issues related to intersex and transgender people that have mysteriously disappeared from the agenda. The ability to change a birth certificate to reflect one's gender identification is an extremely difficult process. Transgender people are forced to undergo years of psychological assessment, and expensive and potentially life-threatening surgery involving compulsory infertility, in order to qualify. They also may not change their birth certificates if they are married. This situation is obviously discriminatory and extremely distressing.

Equally, there have been a number of approaches from intersex organisations who continue to be outraged at the unnecessary surgery performed on children to make them conform to one sex or another. When this surgery is incorrect, it can have horrific physical and psychological consequences for the person concerned.

While I commend and support the government for continuing to take up these issues, I would like to have been able to address many more of the problems that are still out there in the community, and to have avoided raising the needs of gay, lesbian and bisexual people over those of transgender and intersex people. I hope that, in future, when the government talks about the GLBTI community, it will be referring to all members of all of those communities.

Finally, my motion, which we debated in August 2002, called for the introduction of policies and programs to challenge discrimination in government and the community. This legislation needs to be backed up by on-the-ground resources. Changing the law will not, by itself, eliminate discrimination in the territory. Throughout this entire process I have called on the government to go beyond simply changing the statutes and actually implement new government programs that educate people about tolerance out there in the community.

I continue to suggest that the government should implement a central policy unit in the Chief Minister's Department to oversee the coordination and implementation of new programs across the ACT public sector. However, government has not yet taken up the suggestion. Maybe it is a budget initiative we will see soon. I would note that the ACT Labor conference called on the ACT government to appoint a ministerial advisory council on GLBTI issues, but the government has not done this either.

If the ACT government is serious about promoting a tolerant community, it should put in place the resources to achieve that. The legislation is commendable but it will not fix the problem alone. As the Treasurer has said tonight, we legislate and then educate. We need the resources to help that education process happen.

It is important that we have had the debate here in the Assembly today. It is important that these issues have been debated in the media and in the community. When people really think about these issues and when people begin to meet and talk to members of the queer community, they begin to realise we are pretty much all the same. Being lesbian or gay does not mean having less desire to have children than other people; it has no effect on how strongly gay people love and support each other.

I do not believe that the people of Canberra are discriminatory at heart. It is interesting to note that, in both Western Australia and Tasmania, opinion polls on the issue of same-sex law reform were heavily in favour of the reforms once they had occurred. I think that people in Canberra who have had doubts about these reforms will quickly see that their lives will not change. However, life will improve drastically for those people in same-sex relationships and the queer community who can now take advantage of legislative equality.

I want to note that the economic white paper mentioned the fact that Canberra needs to attract and retain talented and creative people in order to maintain its economic advantage. As we have been quoting a lot of research tonight, I quote research that has been done by Richard Florida in the United States that shows that talented and creative people tend to be attracted to areas that have high diversity and tolerance, and that these areas are highly tolerant of gays and lesbians, as well as showing high levels of racial integration and high immigrant populations.

Queer rights are human rights, and we will soon be debating a human rights bill. That bill expressly includes the grounds of sexuality. The real reason we are debating this legislation is not that we are trying to cater to a single group in society, but the opposite: it is that those of us who support human rights in this Assembly believe that all people should be equal before the law. It does not matter if the grounds are race, religion, gender, disability or sexuality; our laws should not discriminate. That is why the Australian Democrats have fought for so many years to remove discrimination from legislation across the country.

I want to relay to the Assembly a story that I heard today. I met a mother who joined us in the gallery and she said to me, "I have two beautiful children. One is a lesbian; one is not. Why does the law treat them differently? Why can't my children, who live here in the same community, have the laws treat them the same way?" That is what we are trying to do today: to remove this discrimination and to allow families and other people to live without this discrimination forcing them to be second-class citizens.

I am glad to see this debate progress today. I am happy and proud that we are moving on with this second lot of law reform and that the opposition has said that it will support the bill in principle. We will have further debates in the detail stage. However, I do wait for more reforms to take place. We need some real budget initiatives to support this legislative work.

I would again like to thank the staff in the Department of Justice and Community Safety for the work that they have done, the Good Process group for the amazing work that it has done, and members of Canberra's queer community for their work in identifying the issues, working with the government and members of the Assembly and making this process move forward. I especially thank Llewellyn Reynders, on my staff, for the work that he has put in, not just as a member of my staff, but as a member of the Good Process group.

I would also like to make some observations about the debate we have had today. Back in 1994, the ACT Legislative Assembly passed the Domestic Relationships Act. At the time, it was landmark legislation in recognising the equality of same-sex relationships.

I quote a comment made by the then Labor Attorney-General, Mr Connolly:

> It is of credit to this community and this parliament that we have been able to run a debate on this issue and to run it sensibly; to talk about extending access to justice and the ability to enforce a right, instead of racing off on a tangent…and getting lots of media headlines and dividing the community. I sincerely thank all members of the Assembly for that, and particularly the Opposition.

It appears that the opposition, since that time, has changed its approach. It is unfortunate that the Liberals have resorted to some muck-raking, headline-grabbing behaviour, because there was a time when they considered themselves above it. We have seen their colleagues in other jurisdictions rise above the mud-slinging to support reforms to remove discrimination. It is unfortunate that we have not had that level of informed debate today, because it reflects badly on the opposition and it reflects badly on this Assembly.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.57), in reply: The government introduced this bill as the second stage of its commitment to address laws that discriminate on the grounds of sexual preference or gender identity. The bill, along with the Parentage Bill, is a significant step forward in Labor's commitment to give practical effect to the principle that all people are entitled to participate in society and to receive the protection of the law, regardless of their sexual orientation or gender identity.

It is also part of the government's broader commitment to building a culture of respect for human rights through the introduction of a human rights act for the ACT. The main purpose of this bill is to remove discrimination relating to sexuality and relationship status. The amendments that the government has proposed with respect to the recognition of same-sex relationships are a direct and practical manifestation of the right to equality before the law and freedom from discrimination.

The bill amends a number of provisions that are currently expressed to apply only in respect of a spouse, which may or may not be defined to include a de facto spouse, so that they apply to the broader category of domestic partner. The amendments build on the concept of domestic partnership that was included in the Legislation (Gay, Lesbian and Transgender) Amendment Act 2003. The bill will also provide increased protection against discrimination on the grounds of sexuality, transsexuality or HIV/AIDS status through the inclusion of anti-vilification measures in the Discrimination Act 1991.

In addition, the bill contains an amendment to the Crimes Act 1900, to address the issue of the availability of the defence of provocation in the case of non-violent homosexual advance. This is commonly referred to as the homosexual advance defence. The approach that the bill takes in addressing the use of the homosexual advance defence is non-discriminatory in that it is not limited to only a non-violent homosexual advance, but applies to any non-violent sexual advance.

The amendment provides that a non-violent sexual advance towards the accused by the deceased is not to be taken, by itself, to be conduct which could have induced an ordinary person, in the position of the accused, to have so far lost self-control as to have formed an intent to kill the deceased, or to be recklessly indifferent to the probability of causing the deceased's death. However, such conduct may be taken into account with

other conduct of the deceased, in deciding whether the act or omission causing death occurred under provocation. This is intended to preserve the availability of provocation where the non-violent sexual advance is an act that follows from a previous history of other provoking conduct.

The Legal Affairs Committee, in its scrutiny report on this bill, has raised the question of whether the amendments proposed to section 13 of the Crimes Act will produce a sufficiently clear law. The law relating to provocation, as the committee observed in its report, is an extremely difficult and vexed one. There is no doubt about that. It is the government's view that these proposed amendments are as clearly drafted as is possible within this area of the law. The proposed amendments would certainly not make the law any more difficult than it already is. In the absence of any concrete suggestion as to how the provision could be improved, the government's view is that the ill that it seeks to address is quite clearly indicated.

The issue of provocation as a whole will be examined, in any event, in the context of the implementation of chapter 5 of the model criminal code, work still in hand. Until chapter 5 is complete, the government is keen to ensure that provocation is not used in this particular way.

The Legal Affairs Committee also asked whether the principle of equality before the law had been breached. In particular, the committee posed the question of why a particular sensitivity to a sexual advance should be treated differently to a particular sensitivity to anything else. The purpose of this deliberately specific amendment is to address a very specific issue that has arisen at common law. There is a distinct body of law on the use of the homosexual advance defence which, as has been pointed out, has been subject to much academic comment. It is the government's view that the use of the homosexual advance defence as a partial excuse for murder is of itself discriminatory, and this amendment is designed to address that issue.

Another aspect of the bill that has been the subject of comment is the proposed repealing of sections 18 and 30 of the Public Baths and Public Bathing Act 1956. Sections 18 and 30 of the Public Baths and Public Bathing Act essentially provide that a person over the age of six may not enter any part of a public bath or public bathing convenience that has been set aside for persons of the opposite sex. The penalty for the offence is $100. The inappropriateness of these offences is evident in the fact that, under these offences, a seven-year-old child who uses the wrong changing room becomes criminally liable for using the wrong changing room.

We have, as everybody in this place knows, an accepted principle of law in the ACT that no child under the age of 10 is to be held criminally responsible for an offence. We proceed on the basis that no child under the age of 10 can form a criminal intent, and yet here we have in the Public Baths and Public Bathing Act a provision which renders a child of seven, eight or nine a criminal. As I say, that is a broadly accepted principle within the ACT. I know of no other provision in ACT law in which a child under the age of 10 can be held criminally liable for an action except in this piece of legislation—

Ms Tucker: It is strict liability, as well.

MR STANHOPE: Yes, good point, Ms Tucker.

I might just make the point that the provisions in relation to the age of criminal responsibility are in any event codified, or are being codified, in respect of all new offences by section 25 of the Criminal Code 2002.

Concerns have been expressed to me—and I think to other members—about repealing these offences. The concerns go to issues of the privacy and safety of people using the facilities. This is an issue that has stirred some community concern and I will just dwell on the government's further justification for the change and make a couple of observations about those concerns about privacy and safety.

First, it is important to note that sections 18 and 30 of the Public Baths and Public Bathing Act do not, of themselves, prohibit offensive behaviour. They do not prohibit people from indecently exposing themselves. Any offensive behaviour and activity at these facilities is covered by the Crimes Act 1900 and that will not change. We will continue to utilise those provisions of the Crimes Act related to offensive behaviour and indecently exposing oneself that are currently relied on in circumstances such as this. Those provisions will remain. The Crimes Act provisions are direct and they are effective in addressing operative concerns about offensive behaviour in any public place, any public sporting facility, any changing room, including, of course, any public bath or public bathing facility.

Second, as I say, these are the only provisions of this kind in ACT legislation. There are no equivalent provisions, for example, in respect of any other public sporting facility, such as a gymnasium changing room or a locker room at any sporting field. You can go through the full range of other sporting fields, facilities or infrastructure and public toilets. There is no provision such as this in relation to any other public changing facility in a public place anywhere in the ACT. Most pertinently, there is no such provision in relation to public toilets.

However, every member here and every member of the community knows that that does not mean that public toilets are not designated as for males or females. It also does not mean that men are commonly using the toilets designated for women. I am not aware that it is an issue at all, that men—or women, for that matter—are using toilets designated for the other sex.

I think we also need to point out that the offences in the Public Baths and Public Bathing Act only cover a limited number of public bathing facilities—in fact, only six. There are six declared public bathing facilities: the Manuka, Civic, Dickson, Macquarie, Phillip and Erindale pools. The new Belconnen swimming facility, the Tuggeranong facility and other private facilities such as the AIS are not covered by this act in any event. As I said in relation to other facilities, I am not aware of any problems in any of these facilities in relation to these issues. There is no reason to suspect that repealing these offences will mean that people using swimming pools at, say, Manuka, Civic or Dickson will behave any differently from people at Belconnen, Tuggeranong or the AIS.

The observance of sex designations in these facilities is the same, regardless of the presence or absence of this specific legislative provision or offence. Repealing the act does not mean that the facilities will not continue to be designated as for male or female: they will still be male or female facilities.

That is a long explanation, but I am concerned about the way this particular issue has run amok and about the mischievous use that has been made of the government's proposal to repeal this particular offence. It is sheer mischief that has been made with a very simple and tidy bit of legislative cleaning. It is important to note that the original reason for looking at these particular offences was related to how they apply to transgender people. Despite that, the real reason we are repealing these provisions is that they are archaic, anachronistic, completely out of date and quite useless.

In conclusion, I reiterate in relation to this bill, a very significant piece of legislation, that the principles we are dealing with—and, of course, they are principles—are the right to equality before the law and the right to freedom from discrimination. It is the government's belief that everyone is entitled to respect, dignity and the right to participate in society and to receive the full protection of the law, regardless of their sexual orientation or gender identification. This bill gives very practical effect to that determination. I commend this bill, as presented, to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

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

Schedule 1 agreed to.

Schedule 2 part 2.1.

MR STEFANIAK (11.09): I will speak to the first of my circulated amendments and the second, which relates to the criminal code, together. The first amendment relates to the provocation issue. It is proposed that a new subsection (2A) be inserted. It would read:

> (2A) However, conduct of the deceased consisting of a non-violent sexual advance (or advances) towards the accused—
>
> (a) is taken not to be sufficient, by itself, to be conduct to which subsection (2) (b) applies; but
>
> (b) may be taken into account…

Initially, I thought, yes, fair enough. I made some inquiries and what I am mindful of here is the scrutiny of bills report. It appears that, while the New South Wales Law Reform Commission recommended this, the ACT would be the first to do it. There is certainly some serious concern amongst the judiciary, prosecutors and lawyers generally as to the effect of this, and the effect it would have in terms of wider issues in relation to provocation. The suggestion there was that this might be very much jumping the gun, and that it needs to be looked at in a much larger context.

Maybe the attorney does need to do more work here and perhaps needs to look at this in a more holistic way. What led me to draw up this amendment, more than anything else, was the concerns raised by the scrutiny of bills report. As people know, the scrutiny of

bills committee is serviced by Peter Bayne, who is an excellent lawyer and who, like his predecessors, is able to go through an act very quickly and come up with very learned comments in relation to it. In scrutiny report No 41 of 9 December, Peter Bayne goes into a learned dissertation in relation to these particular problems.

It is quite a lengthy report. He starts talking about this matter on page 14 and effectively finishes on page 19, but he has some considerable concerns. He quotes extensively from some High Court cases, including judgments by Justice McHugh. It would be simpler if I read out some of what was said there. He makes some initial comments and talks about the rights issues. He then outlines the law as it stands, under "trial for murder—provocation" in section 13, and the proposed changes. He then goes on to say on page 16:

> It is important to appreciate just what might be the effect of this reform.
>
> The amendment does not address paragraph 13 (2) (a). The jury must find that "the act or omission [of the accused killing the victim] was the result of the accused's loss of self-control induced by any conduct of the deceased".

He goes on to say, "The effect of the amendment on the application of paragraph 13 (2) (b) is also not easy to grasp." He states that it might well be difficult and, when that is added to the sheer complexity of the test in paragraph 13 (2) (b), it may seem that the jury will not easily comprehend what it is to do.

He then extensively quotes Justice McHugh in relation to these issues. He has the view that this reform is limiting, and he talks about the limitations of the reform that have to be noted. He says that the scope of qualification in paragraph 13 (2A) (b) may be wider than the explanatory statement indicates, and indicates that there may be problems there.

He then deals with issues for the Assembly on page 18, so I think it is probably appropriate that I read those. He states:

> To return now to the right issues as posed above, the first question for the Assembly is whether this amendment, when read with the existing law, produces the result that the law is expressed with that degree of clarity that makes its operation fair in the sense that it can be applied, both by the trial judge and the jury, in a sensible way.
>
> The second question is whether the principle of equality before the law has been breached.
>
> This is arguably the case, at least in relation to that class of accused who rely on the deceased having made a sexual advance, and where that fact is a component of the facts that justify the accused claiming that they were as a matter of fact provoked to kill. That is,
>
> - there will be cases where an accused can adduce evidence of a sexual advance because there is just enough evidence that the advance was not non-violent that the trial judge must let the evidence of the sexual advance go to the jury, and/or

- there will be cases where although the sexual advance was clearly non-violent, there happens to be basis for linking that evidence to some other conduct of the deceased.

> There is also the broader question about why it is that there should be circumstances in which a person with a particular sensitivity about a sexual advance cannot adduce evidence of that fact as evidence that would support a claim that paragraph 13 (2) (b) of the Crimes Act 1900 has been satisfied.
>
> What makes it different from say a racial slur? That conduct is a basis for 'justifiable indignation'. It is arguable, as was argued by McHugh J in the High Court in Green, above, at 38, that 'any unwanted sexual advance is a basis for 'justifiable indignation', especially when it is coupled with aggression. Such an unwanted advance may lay the foundation for a successful defence of provocation". (The lack of evidence of aggression would make it more difficult to make out the defence.)
>
> The Committee notes that the issues raised by this proposed amendment have generated considerable debate among scholars. Justice McHugh cited an article the thesis of which was that "a special rule precluding the use of the provocation defense in homosexual advance (or, more generally, sexual advance) cases is too tenuous to withstand scrutiny" (see Dressler, 'When "heterosexual" men kill "homosexual" men: reflections on provocation law, sexual advances, and the "reasonable man" standard' (1995) 85 J. Crim. L. & Criminology 726). This article was itself a rejoinder to one in which the contrary thesis as advanced; that is, that a non-violent homosexual advance should not in and of itself constitute sufficient provocation; see Mison, 'Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation' (1992) 80 Cal. L. Rev. 133.

There are some real issues raised in Professor Bayne's comments in scrutiny report 41. The other real issue is that ours is the first jurisdiction to do this. Real concerns are now being expressed by people in the profession in relation to this and these issues are really too important for us to rush in here. When I first read this, I did not have any particular problem with it. The problems arose once I saw the scrutiny report. I am not sure whether there was consultation with the DPP in relation to this, but concerns have also been raised by members of the profession regarding this.

While I have no problems with the intent of what the Chief Minister is trying to achieve, I think the most sensible thing to do is to reject this part of the bill today. I think the government should perhaps consult the profession more widely, to work out generally what else it might want to do on the issue of provocation, including this particular matter, and ensure that the problems highlighted by Professor Bayne in the scrutiny of bills report are actually addressed. It is an important issue and I think it is very, very important that it is dealt with properly.

I think the report does raise some issues. The brief talks I have had with other members of the profession indicate some disquiet as well, so I think more work needs to be done. Although, as I said, the Chief Minister's intent is something about which, when I read of it, I thought, "Fine. That seems eminently sensible," the way it has been done might be a problem, for the reasons in the scrutiny report and for the other reasons I have mentioned.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.19): Mr Speaker, I acknowledge the very significant analysis that the scrutiny of bills committee made of these particular proposals, and I acknowledge the work of Professor Bayne. Mr Stefaniak, the shadow attorney, has just given us some insight into the thinking and the consideration of Professor Bayne and the scrutiny of bills committee in relation to this particular provision and this particular proposal.

I acknowledged, when I spoke just recently, that this a very difficult, vexed and complex area of the law. There is no doubt about that. The government proposed an amendment to the law essentially to deal with a line of case law in relation to the homosexual advance defence, previously more colloquially known as the gay provocation defence. In the literature and in the case law it is referred to more commonly as the homosexual advance defence.

I think there is a range of reasons why we have to address the issues that have been raised in relation to the way in which people seek to use this particular defence in cases in which it is relied on. We are seeking to address a particular evil in relation to the amendments that we are proposing here. We are seeking to address that evil of homosexual men, gay men, being beaten up for no reason other than that they are gay or homosexual. In instances they are being killed as a result, for no reason other than that they are gay or homosexual men and they aroused a homophobia in their attacker or assaulter and eventual killer that led to them being beaten or picked out for a beating. There is anecdotal evidence for that behaviour and those results.

We know the extent to which, in circumstances where violence is being meted out to members of the gay community, this defence is then relied on in almost every instance. The defendant might say, “The person made a sexual advance and I am a heterosexual man and I was so offended, so outraged, at a sexual advance from another man that I lashed out and beat him to death. Without really quite knowing why I did it, I reacted so violently to this particular provocation.” That is an evil to which we have to respond. The government is seeking to respond to that particular evil through these amendments to the law, to the Crimes Act, to adjust that particular defence.

We have put a model on the table. The scrutiny of bills committee, with great respect to this committee, has said, “This is really complicated. This is really hard. We think the government might not quite have got the nub of it.” We did the best we could. I have enormous faith in my officers, those who instructed the Office of Parliamentary Counsel to draft it, to deal with this particular evil. We proposed a solution.

Mr Stefaniak, I know you chair the committee and certainly I am very respectful of the work that the committee does, but the committee said, “We think this might not quite work,” but did not say why not and did not offer an alternative. In the absence of an alternative, in the absence of a concrete suggestion about what might be done to overcome the sorts of concerns that you think may be inherent in the model that we propose, I am inclined to persist.

We made it quite clear what it is that we are seeking to do. It is recorded in the speeches you and I have just made and in the second reading speech and it is included within the

debate. We know what we are doing, it is in the legislation, it is in all the extraneous material and it is in this discussion we are now having. Any court that is confronted with an attempt in the ACT to utilise the homosexual advance defence has sufficient guidance, as far as I am concerned, to know what it is, through the legislative provision, through this debate, to understand what we are seeking to achieve.

I do not share your sense of disquiet. It is quite clear what the government's view on this is. It is quite clear, if this particular provision passes, what this parliament's view is on how this particular defence could be utilised and how it should be interpreted. I do not share your concern, Mr Stefaniak, about inadvertently developing law that will not stand scrutiny or that will lead to some unintended consequence in relation to the availability or utilisation of a provocation defence more generally. I do not have that level of disquiet.

I believe that it is more important that we deal with the issue of the way in which the homosexual advance defence is used, or has been used and, I think in the minds of almost all of us, has been abused. It has been used to justify assaults on and violence against homosexual men and that requires us to act. We should act tonight.

As you know, Mr Stefaniak, the government is working at pace. It is the only jurisdiction in Australia that is to implement the full criminal code. Part 5 of the model criminal code deals with the general issue of provocation. We will trawl through all of the law on provocation when we deal with chapter 5 of the model criminal code. Mr Stefaniak, assuage your concern in the knowledge that the law of provocation in the ACT will be fully reviewed as we deal with chapter 5 of the model criminal code, which will be done soon.

MS DUNDAS (11.26): The ACT Democrats will not be supporting Mr Stefaniak in his move to remove this section from the legislation, because his amendment would be to retain the common law finding that a non-violent sexual advance is a defence of provocation for murder.

Even though I listened to Mr Stefaniak's reasons and his concerns about the drafting, I am quite puzzled by his moves because, most of the time he is here in the Assembly, he is trying to make it easier to prosecute people. However, it appears that he has done a bit of a backflip today and is making it harder to lock up murderers. He and the opposition have put forward the view that they believe a non-violent sexual advance is enough to incite a reasonable person to kill someone in response. I think that the homosexual advance defence is one of the worst features of common law and should rightly be abolished, and we should do that today. This is a long overdue change to the law that is about people's basic right not to be viciously murdered.

I spoke at length about this issue when the original motion was debated in August 2002. I referred to the case of Green versus the Queen, where the High Court of Australia had ruled that the homosexual advance defence was available as a defence for provocation. The case in question at that time was particularly gruesome. However, it was not an isolated incident. The New South Wales working party on the homosexual advance defence found 16 cases where the homosexual advance defence was claimed and, of these, only three perpetrators were found guilty of murder.

I have been reviewing some cases in which the homosexual advance defence has been used where people have been not only bashed in the head but also stabbed and had items stolen from them. How can you then say it was a homosexual advance when you then steal things from a person you have just murdered, to try to sell them? In that particular incident the charge of murder was reduced to manslaughter and the defendant was sentenced to a minimum of three years. Three years for bashing somebody's head in, then stabbing them and then trying to sell their video player!

I think that we really do need to reassess how we judge what is murder and what is manslaughter, and how the homosexual defence law has sat in our case law. I am disappointed that we have this omission from the opposition when I thought that Mr Stefaniak had originally responded quite positively to the suggestion. It appears that, when it comes to defending gay and lesbian people under attack, suddenly the opposition is not as interested in law and order and believes that we need to consider it further, when it is very happy to jump on the law and order bandwagon in relation to many other issues.

The scrutiny of bills report made comments about this law and it claimed that the changes to the Crimes Act proposed in this bill may not wholly reflect the intention of the law. However, I note that the provisions of the legislation act instruct the court to give high regard to the intention of this bill. I think the intention is quite clear: we are trying to remove the defence of homosexual provocation. As has already been pointed out, this is a difficult and complicated law, but it will be redrafted and reconsidered when chapter 5 of the criminal code is introduced to the Assembly, so we will have an opportunity to address further issues then.

However, I am satisfied that the clauses presented give effect to the intentions of the legislation, and that this is a crucial and necessary change that was brought to the Assembly more than 18 months ago. We cannot remove it. We have to include a provision so that people who are killing gays and lesbians in our community with such hatred can no longer get away with it because they put up the defence of homosexual advance.

MR STEFANIAK (11.30): I thank members for their comments. I am not going to drag members downstairs for divisions on something like that. Ms Dundas has made her opposition quite clear. She is also completely misguided. She is right on one thing: I do believe in prosecuting people who do the wrong thing. I believe that people who are convicted in a court of doing the wrong thing should suffer their just deserts.

Ms Dundas, people who engage in belting, killing, maiming or otherwise hurting homosexuals without any cause whatsoever deserve to have the full force of the law applied to them, just as anyone does who carries out similar acts against any human being. So I take a little bit of offence at what you said, but I think you just misunderstand me.

I have been involved, as a prosecutor, in prosecuting people for bashing gay men. I remember a particularly nasty case I had where four men lured some gay men from a public park on an individual basis, took them out of Canberra and bashed them quite severely. I am pleased to say that three out of the four were sentenced to terms of

imprisonment that I considered entirely appropriate in the circumstances. I think you completely misunderstand me and I do somewhat resent you saying that, if it is a gay person, I have a different attitude. That is absolute nonsense. I wanted to make that point.

I do not know if you were listening but, yes, you were quite right that my initial reaction to this legislation was probably the same as yours and everyone else's: I thought, "This looks fine." It was after the scrutiny of bills committee considered it, Professor Bayne made his learned comments which are regurgitated here in the report, and I contacted and spoke to several other practitioners—who had concerns about it and the need to ensure that it is done properly, and said that this might well cause some difficulties in interpretation and getting results in courts as much as anything—that I thought it was important for this Assembly to say, "All right, hold it. Let's get this right. Let's not do this now because that could be counterproductive to what you want to happen."

The attorney has mentioned that there is to be a comprehensive review. We will have a new—

Mr Stanhope: Chapter 5.

MR STEFANIAK: Thank you, Jon. A new chapter 5 and that will happen fairly shortly. Yes, I am aware of that occurring. I think that might be the best way to go. I note what he says, I note his opinion, I note your opinion, and I can count: nine beats eight. I am not going to presume how Mrs Cross or Ms Tucker would vote on this one, but you are quite happy to back the attorney on this one, Ms Dundas, and so my amendment is going to go down.

However, I do make those points and I do think it is important to ensure that we do pass good law and do get it right, even if it does mean sometimes that we do have to wait a little while. In terms of being a bit soft on prosecuting certain type of offences, however, no, far from it, Ms Dundas. I have dealt with these offences and I know how reprehensible these acts are. I have seen the results so that was the furthest thing from my mind in putting up this amendment. I think I have probably explained to you now exactly why we have it. If you do not accept that, fine. You will vote against it and we will live with that. However, I make those points and I do commend the amendment, for the reasons I have given, to the Assembly.

Schedule 2 part 2.1 agreed to.

Schedule 2 part 2.2 agreed to.

Schedule 2 parts 2.3 to 2.5, by leave, taken together.

MR STEFANIAK (11.35): The next of my circulated amendments is consequential on the previous amendments so I have said all I need to say there, Mr Speaker.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.35): This is in relation to vilification on the basis of HIV/AIDS status or sexuality. Is that this amendment, Bill?

Mr Stefaniak: No, it is not, or is it?

Ms Tucker: Yes, it is.

MR STANHOPE: I do not know whether you want to speak to this. I do not think it is consequential, Mr Stefaniak. The government will oppose your amendment. It maybe that you do not wish to speak to it. I would be happy if you do not, as it is getting late.

Mr Stefaniak: If that is the case, no.

MR SPEAKER: Do not encourage him.

Mr Stefaniak: No, I have already made my comments, Mr Speaker.

MR STANHOPE: The government will oppose this amendment, Mr Speaker, but while I am on my feet I will take the opportunity to say that I take your point, Mr Stefaniak, in relation to the previous debate and the previous matter. There was an arguable point, Mr Stefaniak, and I do not disagree with you. I must say that I think Ms Dundas was a bit harsh on you. It is the only arguable point you have made tonight, Bill, but I want to acknowledge it. At least it was arguable.

MS DUNDAS (11.36): I rise to be probably a little bit harsh again, but my understanding of this amendment is that it is about removing the new provisions for vilification that have been inserted into the legislation. Some of the arguments that could be put forward about this relate to freedom of speech, but I would like to note that the bill specifically exempts anything that is "a public act, done reasonably and honestly, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and presentations of any matter." Those things are exempted from the unlawful vilification legislation that we are putting in.

Mr Stefaniak: Point of order, Mr Speaker: with the greatest respect to my colleague, she had me a bit worried there. This amendment actually refers to parts 2.4 and 2.5, which just relate to a heading. My understanding was it simply relates to the application of the criminal code and definitions, rather than part 2.6, which actually remains. Actually, it is part 2.7 which deals with vilification. I think the intention there was simply the application of the criminal code, which relates back to the non-violent sexual advance provision.

MR SPEAKER: Mr Stefaniak, I have an amendment from you, amendment No 2, which is about schedule 2 part 2.3, and another amendment which is for schedule 2 parts 2.4 and 2.5. The proposal we are considering now is that schedule 2 parts 2.3 to 2.5 be agreed to.

Mr Stefaniak: That relates to page 30, line 1, sir, and that is a completely different section entirely.

Mr Stanhope: Point of order, Mr Speaker: I am advised that Mr Stefaniak's amendments as circulated probably contain typographical errors in that the sections, as circulated in Mr Stefaniak's amendments, do not equate to the government's bill. There is a bit of a difficulty there.

Mr Stefaniak: They were given to me by counsel, Mr Speaker.

Mr Stanhope: Yes. I am not disputing that, Bill. I am advised that the Office of Parliamentary Counsel's draft does not quite equate to the government bill.

MS DUNDAS: Perhaps the simple explanation is that there is some confusion between the square brackets and the parts. We have part 2.3, which is the Discrimination Act, and then under that we have [2.4], [2.5], [2.6] and [2.7] so, when I looked at this amendment, I thought it took in the whole part of 2.3 from page 27 through to page 30. That was my understanding of this amendment.

Mr Stefaniak: That is right, that is not the intention. If there is any confusion there, I will not proceed with it.

MR SPEAKER: Is it the case that we are still considering parts 2.3 to 2.5?

Mr Stefaniak: Yes, just go ahead and do that.

Schedule 2 parts 2.3 to 2.5 agreed to.

Schedule 2 part 2.6 agreed to.

Schedule 2 part 2.7

MR STEFANIAK (11.40): I move amendment No 4 circulated in my name *[see schedule 3 at page 164]*.

This amendment relates to 2.15, which actually corresponds both in my amendments and the government's bill. We are on the public bathing act now. I was given these amendments and I am sure that everyone, even the parliamentary counsel, makes errors occasionally and I am sure it was done in good faith.

Might I just say that, in relation to that part, there was one other little area about which some concern was expressed by Mr Ken Hubert, a very experienced solicitor, which I would commend to the attorney. That related to the issue of uplifting the evidence provisions from the Commonwealth Evidence Act and putting them in this act. He has some significant concerns, which I want the government to take on board. He believes this change will have some unintended consequences and that it goes considerably further than I was led to believe, which was simply that it transfers the Commonwealth Evidence Act provisions into this act, with the additions to this act to make it consistent with anti-discrimination legislation. That point relates to some of those missed numbers which we have on the amendment sheet.

Now to the final amendment here, which relates to the bathing act. Mr Speaker, what I have done here, in relation to this particular amendment, is bring back what Mr Stanhope would seek to take out. I do not accept his argument here in relation to this act. It is an act that has served the test of time. Yes, he states that it is an act that prevents you prosecuting someone who is under 10. That has been the law for decades, even before this public baths act indicated you could not prosecute anyone under the age of

eight. I think we have had that since about the 19th century. More recently, the age has been increased to 10 and, of course, a person between 10 and 14 has to have criminal intent to be prosecuted.

This is hardly the most heinous crime of the century; it is more of a misdemeanour. One penalty unit, $100; you do not get any lower than that and I have not seen part-penalty units. However, the effect of this in our public baths has served us well. Yes, there are a number of gymnasiums and private pools around and, in most of those, unless they are very small and have a unisex toilet or something like that, invariably they have a male change room and a female change room.

Owing to advances in sport and recreation facilities over the years, most change rooms these days are a lot more private than they were in the past, but that is not necessarily so with our public baths. If you go into the Civic change rooms, they are open and, similarly, those at the Manuka swimming pool and other public baths are open. People of the same sex have changed there and been protected by what I think is some very sensible legislation—and I think many of the public think so, too—for many, many years.

People have some real concerns about adverse effects if this legislation is changed and if the government is successful in getting rid of these particular protections, sections 18 and 30, which have served the test of time. It is all very well for the attorney to say, “Yes, but if people do the wrong thing it is offensive behaviour and they can be prosecuted,” but there are a lot of things that occur with regard to which you could not mount a prosecution, which I think people would simply find problematic. Women, for example, might be changing, say, at the Manuka pool or Civic in their change room and, if this is successful, men could go in there to change, because there is absolutely no sanction.

That might offend modesty, it might offend the personal space of the women who are changing and it might make them feel uncomfortable. The men might be doing absolutely nothing wrong, just getting changed there, but would make the women there—and there might be women with small children—feel uncomfortable. A number of women have said to me that they would feel very, very uncomfortable in that situation. That is not to impute any improper motives or anything like that necessarily, on persons coming in.

Of course, there is the potential too for a little bit of mischief as well, such as perhaps teenage boys getting in and annoying the teenage girls. There are also concerns that people would have about paedophiles, concerns about people maybe taking pictures with digital cameras and all those sorts of matters for which yes, there are offences with which you can charge the perpetrators. However, Chief Minister, that never stopped you bringing in additional offences before when you felt the need arose.

We had an example recently, in the act we have just done, of a situation like that. Here you are saying, “No, there are adequate offences. We do not need this. Let’s get rid of it.” You could say the same thing about this: “We do not really need racial vilification, we do not need sexual vilification, because no-one has ever been prosecuted for that.” Yet, you are hardly likely to say we will scrub that from the statute book, even though there are ample offences under the Crimes Act which would deal with that type of

behaviour. You would say there is a real need for strong anti-vilification laws; similarly here.

Yes, there are a number of offences with which people who really misbehave could be charged. However, this has served the test of time. It is an additional offence, which I think everyone appreciates, that in these public baths, if you are six or older, you change in the same-sex change rooms. You said in the media, "It is homophobic," but it is far from it. I think that, if you were homophobic, you would be delighted to have unisex change rooms. Far from it; it is just a matter of something that has served us well, of modesty and of people feeling comfortable in a public situation where they are changing in and out of their clothes into their costumes to go swimming. Basically, that is what this does.

Mr Hubert has sent his concerns to both you and Ms Gallagher. Regarding one instance that concerns him, he states:

> On the issue of public bathing it is not hard to envisage an adventurous person entering an area to look and see. If he or she is not behaving offensively or exposing his or her person they do not offend the crimes Act so far as I am aware. It is a case of desexing law from reference to male and female. The community is composed of male and female and to enact legislations does not change the way people are made.
>
> In the real world there are people who take technical points and will if you let this one past.
>
> If there is a real transgender issue you could merely create a defence based on appropriate medical and psychological evidence.
>
> Please again consider your position as I genuinely believe you are taking a very dangerous direction.

You do not need to go down this particular path: it is completely unnecessary. There are other ways in which you can address this problem. I think it probably only affects a very tiny proportion of people in our community, but you say there are some problems with transgender people and intersex people.

The amendment I have prepared here, with parliamentary counsel's assistance, enables that situation to be taken into account because it retains the current law. I do not agree with your considerations there: it is something that has served us well. It is something that has been around even when we have had the 10-years rule and the eight-years rule for children. No-one has had any real problem with that before today and you are changing it. You say it is a problem. No-one has come to me about that but let's just say that it is a problem in relation to transgender or intersex people.

The amendment here includes a provision to ensure that the problem you have identified is overcome. You say:

> For this section, if the bather is a transgender or intersex person, the bather is taken to be a member of whichever sex the bather identifies with by living, or seeking to live, as a member of that sex.

I think parliamentary counsel have a done a good job there. It is not dissimilar from other excellent laws which were passed here not all that long ago in relation to transgender and intersex people who got into trouble with the police and had to be searched by a police officer of the sex with which those people identified. That is, if the person identified as being female, the police would get a female officer to search that person.

There is that precedent, and this amendment will overcome the problems that you have envisaged, not that, I repeat, I have ever heard of there being a particular problem. However, if there is—and I take you at your word there—this amendment would cover that. This is an issue that has caused some real angst in the community. I think there are a number of real problems there that you probably do not appreciate and I commend the amendment to the Assembly.

MR PRATT (11.51): I received some correspondence from a concerned resident in my area of interest who has a young daughter who swims regularly and is moving into competitive swimming.

Mr Stanhope: Where does she swim?

MR PRATT: I think down in the Tuggeranong area. He has asked me a question—

Mr Stanhope: Not covered by the legislation, Mr Pratt.

MR PRATT: I will ask you, Chief Minister, if when you wrap up you would clarify this issue. I would like to know the answer. He wants to know if his 11-year-old daughter, who is approaching puberty—and, of course, as are all girls approaching puberty, she is pretty sensitive about issues—can be guaranteed that, whenever she attends a public bathing area throughout the ACT, she is not going to be subject to a unisex functional area. I would like you to answer that, when you wrap up, please, Chief Minister.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.52): I went into this in some detail in my earlier comments, Mr Speaker, and I do not want to delay members. I think this is a mischievous debate and it is a debate that has been spun right out of context.

We have in the ACT—I did not do a count but it might have been useful if I had—I guess 100 public toilets. I would imagine that we would probably have a couple of hundred change rooms at different sporting facilities. It would be a couple of hundred if you counted up the gyms, all the ovals, the football stadiums, the basketball stadiums and the change rooms in school gymnasium halls. If you counted them all up, there are 200 or 300 sets of change rooms, a couple of hundred public toilets and six public pools. We have one rule for six public pools and we have a different rule for the 400 to 500 other places where people go to do such private things as change.

We have one rule for six public pools, the Public Baths and Public Bathing Act 1956, which was drafted and passed in 1956 to deal with certain mores prevalent in 1956. Since then, in relation to these other hundreds of change rooms and these hundreds of public toilets, we rely on the Crimes Act. We rely on the offence provisions in the Crimes Act that relate to offensive behaviour and indecent exposure. We do not need the

Public Baths and Public Bathing Act of 1956. It is old, it is anachronistic, it is out of date and it is just past its use-by date.

You represent Brindabella and I have no doubt that your constituent's daughter uses the Tuggeranong pool. The Crimes Act applies to the Tuggeranong pool. The Tuggeranong pool is not covered by the Public Baths and Public Bathing Act, neither is the Belconnen pool, neither is the AIS pool and neither is the Kaleen sports centre swimming pool. They are all covered by the Crimes Act.

However, if you happen to swap from the Belconnen pool, where you are covered by the Crimes Act, to the Macquarie pool, two kilometres up the road, you are covered by both the Crimes Act and the Public Baths and Public Bathing Act. This bit of legislation is obsolete, it is unnecessary and it is useless and, had we picked it up in some other law reform process, namely our other statutory tidy-up processes, we would not be having this debate.

We are having this debate because it was caught up in a range of proposals in relation to the removal of discrimination against gays and lesbians. The mischief that has been caused as a result of that, the silly letters that I have been getting and the letters to the editor about us creating some sort of unisex public toilet policy, are a nonsense. You should stop it. You are creating a mischief and uncertainty and anxiety in the community that does not do you credit.

This is just getting rid of a bit of unnecessary law that is covered by the Crimes Act, and I am getting letters from people of the sort that you have just described, the sort that you are getting, expressing totally unnecessary anxiety. You have created completely unnecessary mischief and anxiety and that has been occurring only because this matter has been caught up in a law reform process dealing with the removal of discrimination against gays, lesbians, transgender and intersex people.

MS TUCKER (11.56): The Greens will not be supporting this amendment for the reasons that have been very clearly articulated by the Chief Minister. I think it is quite unnecessary to worry about this. I would be more inclined to worry about the thought of a woman going in with a six-year-old child who happened to be a boy and suddenly finding that the boy is liable, under strict liability, for a penalty for committing an offence. It is totally ridiculous.

There is, of course, the capacity for offensive behaviour to be dealt with. If people do not respect the convention that you do not go into the toilet or change room of the opposite sex and they are causing offence, then they can certainly be charged with that under offensive behaviour. Of course, nobody wants to see that happen, but it does not happen. It seems to be a convention that is pretty well understood: you go into the toilet of the sex to which you belong. I have not seen it to be a huge issue. I agree with the Chief Minister that this has been beaten up in a way that is unfortunate because it has alarmed people unnecessarily.

MR STEFANIAK (11.57): I thank members for their comments, even though I do not necessarily agree with everything that has been said. On this point, too, it is quite clear that the numbers are against this particular amendment.

I have to disagree with the Chief Minister when he said that, because this matter appeared in this particular bill, it has been objected to, whereas it would probably just go through if it was in another bill. This is not a law that has been around for a long time and yes, it only applies to about six premises in Canberra. However, I think every other premises has probably adopted, through convention or otherwise, a similar set up. Invariably, as I said earlier, in any large establishment, you will have a men's change room and a women's change room. Sometimes they will have showers, toilets or changing facilities, depending on the nature of the change rooms, but I do not think I have seen many that are effectively a unisex change room.

This law, I think, has served the test of time pretty well indeed. I am not sure if anyone has been prosecuted under it or not. I think that is probably right. I cannot recall anyone being prosecuted under it. However, I think it has served us well. It is something that, unless there is very good reason to get rid of it—and its being an old law is not reason enough—should remain. The Chief Minister's reason, in his introductory speech, for getting rid of it was that problems had been caused in relation to intersex and transgender people and—

Mr Stanhope: That is what we first looked at, Bill.

MR STEFANIAK: Yes, and, taking that on board, I have come up with this amendment to overcome that particular problem. Now it seems that it is a law that should not be there at all but, at the time this was introduced, that was what was being got rid of. I think the Chief Minister is being somewhat cute if he is saying, "There have been all sorts of mischief out there in the present," because, quite clearly, all sorts of ramifications would flow from this law, which was put up simply as a result of some concerns in relation to transgender and intersex people, which this amendment covers.

I do commend this amendment to the Assembly. I note, from what people are saying, that it is not going to be successful, but I do think it is a sensible amendment which quite clearly keeps a law that served us well, but also takes into account the concerns the Chief Minister raised when he introduced the bill.

Wednesday, 11 February 2004

Amendment negatived.

Schedule 2 part 2.7 agreed to.

Title agreed to.

Mr Stanhope: Just before the final vote on the bill, Mr Speaker, I would like to acknowledge the very significant work—

MR SPEAKER: I am reminded that you cannot debate this particular issue. We have gone past that point.

Mr Stanhope: When was that point?

Mrs Dunne: We have already agreed to the title.

Mr Stanhope: I did not realise that. Okay, I beg the pardon of all of those officials who have worked on this for two years. They have done an absolutely wonderful job and I acknowledge the fantastic effort of my officials.

Bill agreed to.

Adjournment

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

> That the Assembly do now adjourn.

National Ovarian Cancer Awareness Week

MS MacDONALD (12.02 am): I will not speak for long. Obviously, I cannot speak for longer than five minutes anyway. I just wanted to raise for members' attention the fact that this week is National Ovarian Cancer Awareness Week. I was lucky enough to be the person who launched National Ovarian Cancer Awareness Week at the Hyatt Hotel on Sunday. The theme of this week is improving awareness of ovarian cancer and its purpose is to ensure that Australian women are given the knowledge to assist in the early recognition of the condition. This knowledge and early treatment significantly improves their clinical management of women with the disease and assists their return to health.

Ovarian cancer does not have the profile of other conditions, yet it is a diagnosis that affects around 1,200 women each year. It is the sixth most common cause of cancer death in women and, tragically, approximately 800 women a year are claimed by the condition. Those deaths affect our families and our society, as they signal the loss of the skills and contributions of so many talented Australian women.

The main difficulty in managing ovarian cancer is the lack of early diagnosis and the delay in commencing treatment. This is largely because the initial symptoms are easily overlooked or misinterpreted. In fact, almost 75 per cent of cases are not diagnosed until the condition is at an advanced stage. One of the reasons that the symptoms are overlooked is that they are vague, including things such as feeling bloated or putting on weight, losing weight and so on, things that many women undergo as a normal part of their lives.

There is no screening or detection test for ovarian cancer. Research continues to attempt to identify ways of recognising the condition earlier, however, success in this field is likely to be some time away. Until such a screening test is developed, our main weapon remains providing information to and educating women at risk. I should mention as well that most women who get ovarian cancer are over the age of 45.

There are four vital elements of the ovarian cancer awareness message: ovarian cancer must be considered in cases of unexplained pelvic, abdominal and gastrointestinal disorders; ovarian cancers are often mistakenly diagnosed; there is no reliable screening

test yet developed and most importantly—which most women are not aware of—the pap test does not detect ovarian cancer.

OvCa Australia is the voice of ovarian cancer patients and those personally affected by the condition. This non-profit organisation is dedicated to raising the profile of ovarian cancer. It provides a vital focus of support and education to women, their families and their carers. I want to commend the ACT and region branch of OvCa Australia for its efforts on behalf of our community since its formation in 2001. Its work is a fine example of service to our society and reflects the commitment and dedication of its volunteer membership.

Mr Speaker, I want to finish by mentioning that, as I said, this is National Ovarian Cancer Awareness Week. Green ribbons are being sold or given out to try to raise awareness of the issue. I would urge all members of the Assembly to let as many people as possible know about the possibility of women over the age of 45 contracting ovarian cancer, because the best way we have to fight against it is by trying to diagnose it as early as possible. Often that is not easy and a lot of GPs are uninformed of the symptoms of ovarian cancer and do not look for it. Sometimes it requires more invasive testing, beyond doing an ultrasound and a blood test, but if it saves women's lives then I think it is something that women should consider getting their doctors to do.

Question resolved in the affirmative.

The Assembly adjourned at 12.06 am (Wednesday).

Schedules of amendments

Schedule 1

Parentage Bill 2003

Amendment moved by Mrs Cross

Clause 2
Page 2, line 5—

omit

"fixed by the Minister by written notice"

substitute

"six months after the notification day".

Schedule 2

Parentage Bill 2003

Amendment moved by Mr Stefaniak

1
Schedule 1
Proposed new amendments [1.6A] and [1.6B]
Page 35, line 17—

insert

[1.6A] Section 19 (2) (b) (iii)

omit

the child.

substitute

the child; or

[1.6B] New section 19 (2) (b) (iv)

insert

(iv) the sexuality of the proposed adoptive parents.

Schedule 3

Sexuality Discrimination Legislation Amendment Bill 2003

Amendment moved by Mr Stefaniak

4

Schedule 2
Amendment 2.15
Page 34, line 10—

omit amendment 2.15, substitute

[2.15] New section 2

insert

2 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1)

- s 18 (Segregated sexes in public baths)
- s 30 (Segregated sexes in public bathing conveniences).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[2.16] Section 18

substitute

18 Segregated sexes in public baths

(1) A person (the ***bather***) commits an offence if—

(a) the bather is at least 6 years old; and

(b) the bather enters a part of any public baths (the ***segregated area***) that is set aside for the exclusive use of members of a sex different from that of the bather; and

(c) a notice is displayed at the entrance to the segregated area indicating that it is so set aside.

Maximum penalty: 1 penalty unit.

(2) Subsection (1) does not apply if the bather enters the segregated area for the purpose of giving assistance to someone else in an emergency.

(3) For this section, if the bather is a transgender or intersex person, the bather is taken to be a member of whichever sex the bather identifies with by living, or seeking to live, as a member of that sex.

(4) An offence against this section is a strict liability offence.

[2.17] Section 30

substitute

30 Segregated sexes in public bathing convenience

(1) A person (the ***bather***) commits an offence if—

(a) the bather is at least 6 years old; and

(b) the bather enters a public bathing convenience, or a part of a public bathing convenience, that is set aside for the exclusive use of members of a sex different from that of the bather; and

(c) a notice is displayed at the entrance to the convenience or part indicating that it is so set aside.

Maximum penalty: 1 penalty unit.

(2) Subsection (1) does not apply if the bather enters the convenience or part for the purpose of giving assistance to someone else in an emergency.

(3) For this section, if the bather is a transgender or intersex person, the bather is taken to be a member of whichever sex the bather identifies with by living, or seeking to live, as a member of that sex.

(4) An offence against this section is a strict liability offence.