DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

FIFTH ASSEMBLY

WEEKLY HANSARD

2 MARCH

2004

Tuesday, 2 March 2004

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The Assembly met at 10.30 am.

(Quorum formed.)

MR SPEAKER (Mr Berry) took the chair and 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.

Distinguished visitor

MR SPEAKER: I acknowledge the presence in the gallery of Ms Rosemary Follett, a former Chief Minister of the Australian Capital Territory. Welcome.

Legal Affairs—Standing Committee
Report 10

MR STEFANIAK (10.32): Mr Speaker, I present the following report:

> Legal Affairs—Standing Committee—Report 10—Long Service Leave (Private Sector) Bill 2003, dated 24 February 2004, together with the extracts of the relevant minutes of proceedings.

I move:

> That the report be noted.

Mr Speaker, I have dissented from this report, and I will say a bit more about that later. I note that this bill was referred to the committee on 5 May 2003. My committee certainly prides itself—and I think I speak for my other two members, Mr Hargreaves and Ms Tucker—on trying to do things expeditiously. We had a bit of problem in that, despite repeated requests, the government declined to give a position on this interesting bill. It was indicated to us that the government was not going to make a formal submission. The committee has now introduced its report, having held public hearings and deliberating.

Basically, long service leave is a period of paid leave from work which has generally been granted to employees after a continuous period of service with an employer. It has its genesis back in colonial times when colonial officials would be granted long service leave, after a period of years in the colonies, to go back to Great Britain.

The purpose of such leave, as articulated in various cases and in parliamentary proceedings, is to reward long serving employees and provide them with a respite from work and enable them to renew their energies at intervals during their working life. It can be used as an incentive by an employer to retain an employee and to reduce labour turnover. It is something the public service in Australia has had for a number of decades.

As the report indicates, legislation has been passed to extend these entitlements to the private sector as well. Page 2 of the report lists the long service leave entitlements to

which workers in the private sector are entitled. The list includes an entitlement—and the ACT is quite generous here—in relation to a pro rata benefit on the worker becoming redundant. Page 2 also lists the acts that govern long service leave in Canberra, namely, the Long Service Leave Act 1976, the Long Service (Building and Construction Industry) Act 1981 and the Long Service Leave (Contract Cleaning Industry) Act 1981.

What Mr Berry's bill would do is extend long service leave entitlements right across the private sector regardless of whether employees stayed in the one job or not. In other words, his bill would give portability to employees in the private sector who are not covered by any of the bills that I have just mentioned.

Naturally and as expected, such a move has evoked some controversy. Before I go into that, Mr Deputy Speaker—and this is covered in my dissenting report—might I just say that our approach to long service leave in Australia is quite distinctive to what applies in the rest of the world. It is distinctive in that it is a legislated right for the entire workforce if you stay in the one employment for a period of time.

Other countries, such as the United Kingdom and Greece, grant long service leave as a reward for continuity of service; and they grant an extended period of annual leave. In some Canadian provinces extended annual leave after set periods of continuous service is prescribed in legislation. In New Zealand there are long service leave provisions in some employment contracts. But Australia certainly leads the world in provision of long service leave.

What then are the problems? I have brought down a dissenting report for a number of reasons. The first reason is that long service leave is a reward to an employee for dedicated and loyal long service to a particular employer, be that employer the state in the case of public servants, or a particular employer like a firm or a business in private enterprise.

There are a couple of exceptions in the ACT. We have acts which enable portability for workers in the building industry and the cleaning industry. Historically, because of the nature of the work, employers in these two industries have a high turnover of employees. I understand that there was some controversy in respect of the cleaning industry legislation, but at least the rationale is there.

One of the main concerns about this bill is that it would give a blanket cover to anyone who changed jobs, regardless of the origins of long service leave and the rationale behind it, which is to reward long, loyal and effective service to a particular firm. I think it is important to note that in the case of the state, the crown—call it what you will—there is only one employer and it has never particularly mattered if public servants moved from department to department. So there is considerable opposition to the legislation on the grounds that it departs from the general principles of long service leave.

Some other very real concerns have been expressed by such groups as the Chamber of Commerce and Industry. Some very interesting statistics are set out on page 13 of the report. According to the Australian Bureau of Statistics, as at, I think, August 2003 there were some 20,618 businesses in the ACT, and of those approximately 20,000 were small businesses with fewer than 20 employees. Also, almost half of the small businesses,

9,100, were non-employing businesses; 8,000 employ one to four people; and 2,900 employ five to nine people. A total of 38,900 people were employed in ACT small businesses.

The Chamber of Commerce and Industry, which has approximately 1,000 members, is very much opposed to the bill, as is the Canberra Business Council, which I think represents 300 partner businesses in the ACT as well as an additional 5,000 businesses through membership in 39 kindred organisations. The Chamber of Commerce and Industry conducted a survey of its members and the responses indicated that 99 per cent were opposed to the introduction of portable long service leave. The Canberra Business Council said that long service leave:

> is an extra loyalty reward, the fundamental provision of which should not be changed so that the incentive of staying with one employer is eroded to the extent that long service leave is seen not as a loyalty reward and recognition but as a normal entitlement similar to sick leave, special leave or recreation leave bonus.

The Chamber of Commerce and Industry locally and nationally is strongly supportive of that statement, as they are strongly supportive of flexible working arrangements.

There are some real concerns in relation to business. When asked in a survey conducted by the chamber what they would do if they had to pay an extra 2 per cent of business salaries to fund this particular scheme, 26 per cent of responses from members indicated they would pass that on to the consumer, 30 per cent said they would reduce salaries or forgo other award entitlements, 26 per cent said they would reduce staff, and 18 per cent said they would absorb the cost by reducing the income of the business owner.

So there are some real worrying concerns there. Small businesses and workers have some real worrying concerns. There are some real problems for businesses that feel that this is such a disincentive that they will not hire an additional worker when they would really like to do so. Because of the extra cost of another 2 per cent, businesses feel they will have to prune somewhere. It is possible that a worker who retires will not be replaced. Maybe a business will rationalise and a worker will lose their job because the business simply feels it cannot survive any other way.

I know what I would prefer if I were a worker—I would prefer the opportunity to keep my job or the opportunity to get into a job in the territory, the opportunity to see my children have a good chance of getting a job, rather than one additional entitlement of service such as this bill would bring. I think it is very important that unnecessary imposts—and I think this would be an unnecessary impost—are not placed on business. It is essential that we encourage employment, we encourage business, and that we do not drive business away from the territory.

Already we hear businesses complaining about industrial manslaughter laws. Again, that is an ACT first—no other jurisdiction has done it. No other jurisdiction, I believe, is going down this path either. What is being proposed amounts to a further disincentive to business. It is something that will make it more difficult for existing businesses. Businesses that might like to relocate to Canberra could think, "Well, we would be better doing it in Queanbeyan" or "Let's go to Brisbane or Melbourne or Sydney."

All of these sorts of things are not good for Canberra, they are not good for employment and ultimately they are not good for the very people that Mr Berry, for all the right honourable reasons I am sure, is seeking to assist with his bill. At the end of the day it causes far more problems than it possibly solves. It is an impost on business and it does, in my view, go fundamentally against the principle of what long service leave was introduced for—a principle that has applied for decades.

So, Mr Deputy Speaker, I have issued a dissenting report to this report of the Standing Committee on Legal Affairs. I thank our secretary for her hard work in producing this report. I also thank my two fellow committee members, Deputy Chair John Hargreaves and Kerrie Tucker.

MS TUCKER (10.43): Obviously, this was not a unanimous report. I took the position with Mr Hargreaves that indeed this bill should be supported in principle because it acknowledges the fact that the world of work has changed significantly and that many workers are seriously disadvantaged in terms of their capacity to have a break after they have been working for 10 years or some such long period.

I know that a philosophical difference was put to the committee by some people that in fact long service leave is not about OH&S issues and having a break after a long period of work but about loyalty to the employer. In many ways, that is an anachronism when you look at the work situation for a lot of people in our community.

The argument was also put that people who choose to be on contracts—for example, people working in the IT industry—are doing very well thank you very much and are quite capable of managing their own time, working when they need to and taking breaks when they need to. While I accept that that is true for some people working in that industry, we also know that many women are in the situation where they have part-time or casual work. People who are already disadvantaged socially and economically in our society are often the ones who are put in the situation where they do not have a permanent employer and they work across industries. It is a social justice issue to ensure that they are not disadvantaged in the way that they are now. Obviously, a parallel can be drawn with a person working in the public sector, who would not be experiencing that disadvantage and would have the ability to access long service leave.

The committee was asked to look at a really good proposal. Of course, such schemes have existed for some time in the construction industry and the cleaning industry, with the levy actually going down as funds accumulated.

I think the argument about costs to employers that came from some submitters was not supported. There was certainly a survey about what people thought would happen, but when you look at what has happened with the other two funds, costs do not look as though they will be a problem.

If employers are not prepared to acknowledge that they have any responsibilities in this area, then I guess we will just have to disagree with them. If employers are prepared to take responsibility and they have the same experience as the construction industry and the cleaning industry—I cannot see any reason why it would not be so—the costs will be

negligible in the long run. So it is with pleasure that I support the recommendations in the committee's report.

I might just briefly mention the recommendation around discrimination. There was some concern put by some employers—I cannot remember whether it was the Chamber of Commerce and Industry but I remember it was almost a threat—that "if we have this, you will have a situation where people won't be employed if they are getting near the end of their 10 years". There is a recommendation to address that issue as well.

MR BERRY (10.47): I recall reading about a report in the Melbourne papers in the 1860s that the end of the world was approaching because of the eight-hour day. Much debate occurred and eventually, after a long and painful effort by workers in the construction industry to secure an eight-hour day, the struggle was won.

In the 1890s, of course, there was a struggle in the rural workforce. This led to much political action, particularly in Queensland, and resulted in the establishment of the Labor Party to give workers a parliamentary voice. Workers were able to have representatives in the various parliaments throughout the Commonwealth to put their views and help realise their aspirations.

Of course, much has changed in the workplace since those days. This is particularly so in relation to long service leave. Long service leave has its origins in colonial days when public servants were given leave to travel back to the old country and see their families after service in one of the colonies in Australia, and I think the first was South Australia.

Since then, long service leave has grown with the community and changes in the workforce to the point where it is enjoyed by workers across Australia. But they enjoy it in different ways. My first experience of the struggle for portability and protection of long service leave entitlements was with the Trades and Labour Council of the ACT. At that time there was a large campaign to gain portability for construction workers in the ACT who moved interstate. If they moved across the border they lost the entitlements that they had secured in the ACT. It was quite easy to see the growing expectation that this entitlement, first of all, needed to be protected and, secondly, needed to be portable.

In those days, of course, many argued that that would bring about the end of the world, that they would not be able to afford it, that it would force businesses out of the Australian Capital Territory, that it was discriminatory, that it would force employers into areas where they had bureaucratic interference in the workplace and so on. All of the arguments, much like those ones which have been wheeled out in the dissenting report, were wheeled out in the 1980s in relation to that dispute.

Subsequently, the arguments were brushed aside and it was quite clearly proven that all of them were wrong. Employees had their entitlements protected, employees had portability, and the construction industry prospered. Indeed, the construction industry long service leave scheme started out with a levy of about 2½ per cent and over the years it has declined to 1 per cent. At this point they have reserves far exceeding their obligations—I think their liabilities are around about $20 million, in the low 20s, and their reserves stack up to about $40 million. So it is plain to see that a well-managed fund in a secure arrangement will bring about a decline in costs—indeed, below the costs

that would be imposed on employers if they were to manage these entitlements themselves.

Why does the issue arise? Well, the issue arises because different workplaces end up with different conditions. Some employers tend to manage their workforces in such a way that their employees never get access to long service leave.

The current legislation is being amended so that pro rata entitlements can be available once an employee has served five years. However, it is within the capability of many employers to manage their workforces in such a way as to ensure that their employees never get an entitlement to long service leave. On the other hand, there are employers who are loyal to their employees and want to create a decent working place. They are quite happy to encourage their employees to stay with them, to a point where they are entitled to long service leave.

The difficulty arises when those two contrasting employers compete against each other. One employer is able to quote, if you like, on any business that it wishes to attract on the basis that it can save 1.67 per cent because it does not provide long service leave to its employees. This puts at a disadvantage the other employer who provides these sorts of conditions to its workers. It does not take long for employers to start to think, "Well, if I'm going to be disadvantaged by my generous and loyal approach to my employees, I will have to rethink the position." We end up in a race to the bottom, and that is a really serious issue for workers out there.

We know that, with the so-called flexibility that has been created by the Workplace Relations Act, there has been a massive shift to casualisation throughout the Australian workforce. Of course, those workers do not get entitlements to long service because this "flexibility" has allowed employers to manage their workforces in a way to minimise entitlements.

In more recent times we have been faced with headline grabbing corporate collapses which have impacted heavily on workers. But you do not hear so often about the smaller collapses where workers do not get their entitlements because these events are not so massive. But one that struck us and which we have been reminded of on a very regular basis is Woodlawn mines. That company abandoned its workers and, of course, they lost their entitlements. I think that debate is continuing.

What about the Ansett collapse and the impact on workers' entitlements of poor corporate management? These workers' entitlements were not protected. What about National Textiles? This was a company which was managed by a relative of the Prime Minister. It seems that you can get help if you happen to be a relative of the Prime Minister because in the National Textiles case the taxpayer footed the bill. Is it right for the taxpayer to be footing the bill of these major corporations which collapse and are unable to protect workers' entitlements? I say it is not. I say that these working condition ought to be protected.

Employees should feel safe in the knowledge that their entitlements will be available when they are due to them. That has been the case in the construction industry long service leave scheme. It has been the case in the cleaning industry scheme that was established here in the Australian Capital Territory. In fact, a representative of the

cleaning industry scheme came to the committee and gave evidence to the effect that there was a great deal of satisfaction amongst the cleaning industry employers with this scheme. One of the reasons, of course, is they are all operating from a level playing field. All of the employers have to contribute to the long service leave scheme and they either absorb or pass on the contribution they make to the fund.

The Labor Party made a solemn promise before the last election and, of course, there is a high expectation out there amongst workers, and especially amongst unions, that this promise will be delivered. I have given a commitment to the trade union movement and the labour council that I will be continuing to work towards delivering on that promise.

There are about 80,000 to 90,000 workers out there in the private sector—who, incidentally, are voters—who are expecting that their entitlements will be protected. They do not have the same rights as people in the public sector. They do not have the same comfortable rights that politicians have. (*Extension of time granted.*) The entitlements of workers in the public sector are protected. They have portability which extends across thousands of workplaces across the country—between agencies, between states and the Commonwealth, between the territory and the Commonwealth.

A classic example of this is that someone in the Australian Capital Territory working, say, in the food services department of one of our hospitals could, after a little bit of study, find themselves working for the Commonwealth somewhere interstate. They would have portability of their long service leave. But a shop assistant over at the Canberra Centre selling women's apparel would lose their entitlements if they got a better job on the other side of the corridor. How can you argue that that is just? It is not just and that is why these entitlements ought to be protected in a central fund. Workers ought to be protected against losing their entitlements because of company collapses caused by bad management. They also ought to be protected in a way that gives them portability.

I heard Mr Stefaniak say that this was an issue of loyalty between an employer and employee. Well, I have to say, Mr Stefaniak, the evidence that I see does not demonstrate that there is a lot of loyalty flowing from employers to employees. What I see routinely is employers managing their workforces in a way that employees do not get access to long service leave. We know from the statistics that about half of those 80,000 or 90,000 workers in the private sector do not have access to long service leave. That is because they do not hold a job long enough to get it.

This system sets out to provide that security, to provide that break after 10 years work, to recharge the batteries, to do some things with your family. This is particularly family friendly legislation because it provides workers with a break after a long period of work out there in our economy.

No longer can you confine a worker to one employer for all of their life. The economy just does not work that way. We all benefit from a successful and socially just economy and, in my view, this is one way of providing it. But this is not a view that is shared by the business sector. All the scare mongering that was directed at the construction industry has died down. People in the construction industry are moving on happily with their lives and getting on with building things, and the workers have got a socially just entitlement. In fact, they have got an entitlement which is above the standard and they

still have a levy which is well below the cost of the entitlement. They have an entitlement of about 13 weeks long service leave after 10 years. That is more than the entitlement received by workers in government employment, and it is certainly more than what is received in the cleaning industry under the 1976 Long Service Leave Act.

I have had a long association with the issue of long service leave. I am absolutely convinced that it was proper for a prospective Labor government to put before the people of the Australian Capital a promise to expand and protect long service leave entitlements. People out there in the community need to have this reasonable aspiration protected by regulation. As legislators we have a responsibility to ensure that the entitlements of workers in our workforce—those people that we represent—are adequately protected.

There will be claims that there will be some crossover with Commonwealth awards, and that is true to a small degree. I have discussed this with the trade union movement and they have said that they want to get this in place and then work their way through those areas where there might be some crossover or conflict between awards. But in the main, amongst those 80,000 or 90,000 workers there is a reasonable expectation that Labor will deliver on this solemn promise, and I intend to do my best to make sure that it does.

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

Scrutiny report 44

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 44, dated 24 February 2004, together with the relevant minutes of proceedings.

I seek leave to make a brief statement.

Leave granted.

MR STEFANIAK: Mr Deputy Speaker, scrutiny report 44 contains the committee's comments on 11 bills, 41 pieces of subordinate legislation, one government response, and one interstate agreement. The report was circulated to members when the Assembly was not sitting and I commend it to the Assembly.

Leave of absence

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

> That leave of absence for 2 and 3 March 2004 be given to Mr Hargreaves.

Human Rights Bill 2003

Debate resumed from 18 November 2003, on motion by **Mr Stanhope**:

> That this bill be agreed to in principle.

MR STEFANIAK (11.04): Mr Deputy Speaker, the question of a human rights bill, or a bill of rights, has cropped up from time to time in Australia. There have been a number of attempts to enact a bill of rights at federal, state and territory level. To date no government has done so. I think in the days of the Follett government there was a bill which lay on the table and lapsed at the end of the second Assembly.

Mr Deputy Speaker, the fact that no other Australian jurisdiction has enacted a bill of rights, plus the fact that there is certainly no groundswell in our community calling for such a bill, should cause the Chief Minister to pause and ask himself why is he going down this very dangerous path of social engineering?

During the consultation phase it was indicative of the lack of real interest in this bill that at the six public meetings only 120 people actually turned up—an average of about 20 a meeting, ranging from four at the first meeting in Tuggeranong to about, I think, 45 at another meeting. Despite the fact that a deliberative poll was held and there were very good attempts to try to get the public interested, I think those figures of the attendance at public meetings, which were spread out, are telling.

This is a pet project of the Chief Minister and this government. There is no groundswell of public opinion for it, and for very good reason. It is interesting to note what has been said by a lot of people who went to these meetings and participated in debates. Both Mr Stanhope and I took part in a debate in this Assembly that was attended by school students. We both spoke about a bill of rights and then the students looked at the merits. One of the teachers involved rang me afterwards and said that the majority of students opposed a bill of rights. She said that they had developed a very good understanding of the issues and had found the debate very interesting. I was interested to hear that.

A number of people in our community have also made comments. I will read out one letter which quite simply sets out why people do not think there should be a bill of rights for the ACT. The letter is from J and A Coleman, and I think it would have been faxed to most members. The letter, which is addressed to Mr Stanhope, states:

> It does nothing to defend the rights of ordinary Australians/Canberrans and places the jurisdiction of these matters out of the hands of a "democratically-elected" government and into the hands of otherwise unaccountable courts.

They went on to say:

> Incidentally, your continued push for this legislation, despite strong community (even media) objection, is undemocratic in any case. It was not part of your electoral mandate. Please cease and desist, and get on with running our city.

Mr Stanhope perhaps had it in his legal policy, but I do not think many people knew that, hence the comment. They go on to say:

> Why do we still have "burn-outs" every night? Why haven't I seen a police car in our neighbourhood for months? Why can they never send a car out when we call them? Why is it that the only time we ever see police is when they are inside a speed-camera van or a radar trap? Why are there drug deals going on in broad daylight behind my building in Civic?

> All the evidence suggests that you have become too distracted with "hobby-horses", and have failed to deal with the real issues involved in running this city, and protecting your citizens.

That was from just one citizen.

Mr Speaker, I and the opposition believe there is absolutely no need for a bill of rights in the ACT. Our rights are more than adequately protected. They are protected by convention, they are protected by one of the most democratic and one of the strongest democratic systems in the world. They are protected, too, by the provisions in many of our acts of parliament.

Our traditions and our conventions go right back to Magna Carta in 1215 and they have been enhanced and enshrined over the centuries. Our basic rights have also been protected by our acts of parliament, and these range from the constitution which governs us in this country through to such things like the Crimes Act in the territory.

Our fundamental rights and our freedoms are protected by constitutionally entrenched provisions, the electoral laws, laws governing such things as just terms for compulsory acquired property, jury trial, freedom of religion, the right to freedom of expression, freedom of association, freedom from arbitrary arrest and detention, and numerous rights covering accused persons and prisoners. You just have to go to, I think, parts 10 to 13 of the Crimes Act, which contain provisions and restrictions in relation to police powers of search, arrest, investigation, the gathering of evidence and other issues such as the admissibility of evidence and fitness to plead.

Our statutes, our common law and our conventions also protect the right to privacy, to freedom of movement, the right to a fair trial, freedom of peaceful assembly, democratically elected governments through a secret ballot process, freedom of thought, conscience and religion, and the right to own and acquire property. Through the actions of various governments over the last century and through legislation, other rights, such as the right to social welfare, the right to proper standards in the workplace, the right to rest and leisure, the right to an education, rights centring around the protection of children, the right to a clean environment and rights governing equality between all people in Australia have been guaranteed.

If you want to see a recent example of rights protected by statute, you just need to look at the Discrimination Act 1991, which sets out in detail protections against discrimination. The breadth of protection covered in this act can be seen in section 7, which precludes discrimination on grounds ranging from sex, race and age through to status as a parent or carer. Indeed, if anything, there are probably many people in our society who feel that our laws put far too much emphasis on the rights of individuals and not enough emphasis on the responsibilities of individuals. People, for example, often say that there is too much emphasis on the rights of the criminal and not enough regard to the rights of society and the victim. Our rights are further enhanced and updated through the passing of new legislation and also as conventions continue to mature over time.

One of the most fundamental rights is our right to vote and our ability to throw out a government that is not performing, and regular elections ensure this fundamental right.

One of the big problems with any bill of rights is that those rights are transferred to an extent to an unelected judiciary who, no matter how well intentioned and diligent, are not accountable like a parliament is.

Bills of rights have been enacted in a number of western democracies. Have any of the countries that have recently acquired bills of rights been better off for their experience? I think not. It is not just me and it is not just the ACT Liberal Party saying this: it is the view of every other Labor government in Australia, including such vehement opponents of a bill of rights as longstanding Labor premier, Bob Carr.

Bob Carr wrote an article which appeared in the *Canberra Times* of 20 August 2001. What he said in that article is somewhat similar to what was written in his book *Thoughtlines* and is indicative of their attitude to a bill of rights. Bob Carr wrote:

> The culture of litigation and the abdication of responsibility that a bill of rights engenders is something that Australia should try to avoid at all costs.
>
> There have been many calls recently to introduce an Australian bill of rights. Debates have arisen over what rights to include, and how a bill of rights should apply.
>
> I object because a bill of rights transfers decisions on major policy issues from the legislature to the judiciary. It is not possible to draft a bill of rights that gives clear-cut answers to every case.
>
> The right to freedom of speech will conflict with the right to equality (eg. racial vilification) and the right to equality will conflict with the right to freely exercise one's religion (eg. the right to exclude females from the priesthood). Most conflicts will be more subtle and difficult to determine.
>
> A bill of rights can only be interpreted by the courts by balancing rights and interests. Most modern bills of rights include a clause recognising that rights may be subject to such reasonable limits "as can be demonstrably justified in a free and democratic society", a policy decision, not a judicial issue.

Bob Carr goes on:

> If a bill of rights were enacted, it would be up to a court to decide whether freedom of speech should be limited in relation to pornography, tobacco advertising, solicitation for prostitution or the publication of instructions on how to make bombs. These are issues that should be decided by an elected parliament, not by judges, who are not directly accountable to the people.
>
> Furthermore, courts operate within an adversarial process. Matters only arise before them when there is a dispute and judgements are made on the basis of particular facts.
>
> Decisions are therefore piecemeal in nature and cannot take into account all issues relevant to determining policy. In short, a court is not an appropriate forum for making these decisions. A bill of rights does not protect rights. Nor can the courts alone adequately protect them.

Carr goes on to say:

> The protection of rights lies in the good sense, tolerance and fairness of the community. If we have this, then rights will be respected by individuals and governments, because this is expected behaviour and breaches would be considered unacceptable. A bill of rights will turn community values into legal battlefields.

He then says:

> The respected American jurist Judge Hand once said, "This much I think I do know—that a society so riven that the spirit of moderation is gone, no court can save; that a society where the spirit flourishes no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish."

Carr continues:

> Our view of the importance and priority of rights changes over time. A constitutionally entrenched bill of rights freezes those priorities. A bill of rights included in the Constitution in 1901 would most likely have enshrined the White Australia policy.
>
> It is not enough to say that rights can be changed by a constitutional referendum. We all know that referenda are rarely held and are rarely successful. Even when a bill of rights is not constitutionally entrenched—

this is very important in terms of this bill—

> and can therefore be changed by legislation, the political reality is that it is given "quasi-constitutional status" and is almost impossible to amend.

He continues:

> Another problem is the unpredictable ways in which it will be applied by the courts. Sir Harry Gibbs, former Chief Justice of the High Court, has noted that the clauses of the United States Constitution that prohibit anyone from being deprived of life, liberty or property without due process of law have been used to invalidate laws limiting working hours, fixing minimum wages and standardising food quality.
>
> In New Zealand, despite political assurances to the contrary when the Bill of Rights was enacted, the courts have created new remedies to apply to breaches of the Bill of Rights. For example, the NZ Court of Appeal has held that the right to freedom of speech includes a power for the court to order the publication of a correction of defamatory material.

Carr continues:

> Even the Parliament found, to its surprise, that it was subject to the Bill of Rights and had to apply natural justice, particularly in parliamentary committee hearings.
>
> A bill of rights will further engender a litigation culture. Already it seems that people are unable to accept responsibility for their own actions. A person who trips and falls today does not blame himself or herself for carelessness but looks for someone to sue.

> The law reports of Canada and NZ show the extensive use of their bills of rights in litigation, and that the primary use of a bill of rights is in relation to criminal appeals. In NZ, in the first seven years after the Bill of Rights Act was enacted, it was invoked by the accused in thousands of criminal cases.
>
> The Bill of Rights continues to be routinely used as grounds for trying to overturn the admissibility of evidence, including confessions, evidence obtained under search warrants and breath-testing of drink drivers.

It is interesting that the New Zealand bill of rights, as is Mr Stanhope's, is not an entrenched bill of rights. Carr continues:

> In a recent Australian case, a prisoner brought a legal action on the basis that his rights were being abused because there was not enough variety in the vegetarian meals offered at a prison. He relied on the International Covenant on Civil and Political Rights, often described as the International Bill of Rights. His claim was rejected because the covenant is not enforceable at Australian law.
>
> When the courts are swamped with thousands of bills-of-rights cases, where will the ordinary person go for justice? The courts will be made even more inaccessible and the cost of running the court system will increase.
>
> The main beneficiaries of a bill of rights are the lawyers who profit from the fees and the criminals who escape imprisonment on the grounds of a technicality. The main losers are the taxpayers.

Carr concludes:

> Parliaments are elected to make laws. In doing so, they make judgements about how the rights and interests of the public should be balanced. Views will differ in any given case about whether the judgement is correct. If it is unacceptable, the community can make its views known at elections.
>
> A bill of rights is an admission of the failure of parliaments, governments and the people to behave reasonably, responsibly and respectfully.

I have quoted from an article written by Bob Carr in which he enhances some of the comments he made about a bill of rights in his book *Thoughtlines*.

Mr Speaker, New South Wales looked at this issue not all that long ago. In October 2001 the New South Wales Standing Committee on Law and Justice brought down report 17 on the New South Wales bill of rights. One of the committee members dissented from the committee's report. The committee made some pretty indicative comments and I will quote some of them. In chapter 7, which outlines the committee's view, the reports sets out one of the big concerns the committee. The report states:

> The independence of the Judiciary and the supremacy of Parliament are the foundations of the current system; the Committee is particularly concerned at the change over time that a Bill would make to these respective roles. The Committee believes a Bill of Rights could undermine the legitimacy of both institutions.

At the bottom of page xiii the report states:

> Judges make decisions based upon the facts situations and individual circumstances of the cases before them. At times these decisions have policy implications, but the judicial role is not suited to making decisions on the allocation of limited resources among competing needs, as has been persuasively argued by former and current members of the judiciary during this inquiry. Judicial decision-making and political decision-making are different, and need to remain separate. The legitimacy of both institutions suffers when the roles converge. Parliament should not pass legislation, for instance, determining an individual prisoner's sentence. Neither should a court determine the program allocations of a government department.

The New South Wales committee made some very interesting recommendations. Finding 1 states:

> The Committee finds that it is not in the public interest for the New South Wales government to enact a statutory Bill of Rights.

Recommendation 1 states:

> The Committee recommends that the New South Wales Parliament establish a Scrutiny of Legislation Committee similar to the Senate Scrutiny of Bills Committee. This Committee membership should be separate from the current Joint Regulation Review Committee to ensure it can give sufficient attention to its task.
>
> The Committee further recommends that, at least in its first term, the Committee be provided with a budget to contract an academic legal adviser or advisers to assist the Committee with expert advice when required, in addition to the secretariat support necessary for the committee to meet legislative deadlines.

Their second and final recommendation was:

> The Committee recommends that the Attorney General amend s34 of the *Interpretation Act* 1987 (NSW) to confirm the common law position that judges are able to consider international treaties and conventions, to which Australia is a party, when there is an ambiguity in the NSW statute.

Mr Speaker, their main recommendation was that the New South Wales parliament establish a scrutiny of bills committee with an independent legal adviser based on what happens in the Senate. That is exactly what we have. We set up such a committee in 1989 and it has served us well. Members only have to read the Scrutiny of Bills reports that the committee, currently headed by me, gives them every sitting day to appreciate the attention we pay to individual rights and UN covenants. It is all there. That is what the New South Wales committee recommended, and that, Mr Speaker, is where the matter should stand.

Mr Stanhope's bill is a bill that does not have economic rights, yet it is a bill that enables a lot of issues to be taken to the Human Rights Commission, to the court. It is a bill that certainly hones in on the public service. I was talking to someone just recently about how this bill would affect Quamby. It would seem that there would have to be a complete change at Quamby if the spirit behind this bill were enforced. It is estimated that you would probably have to have six to eight separate units for the detainees. You would

have to have considerable additional staff because of the different types of rights in this bill which would apply to that, albeit small but important, part of our public service area.

This is just one indication of how the application of Mr Stanhope's bill—if, unfortunately, it is passed; I know he has the numbers—might affect the public service. So even though it is a minimalist bill of rights, I think there are very significant economic issues, apart from the very important legal issues.

Mr Speaker, some other very learned comments have been made in relation to this bill. Michael Sexton, the New South Wales Solicitor-General, wrote an article in which he raised some of the points that I have covered. At that stage I do not think he had seen Mr Stanhope's bill but had seen the report of the consultative committee. He stated:

> The ACT sometimes has been suggested as a social laboratory for novel legislation. But this proposal has an other-worldliness about it that suggests a scientific experiment gone wrong.
>
> In 1998, a Queensland parliamentary committee recommended against a bill of rights and, in 2001, a New South Wales parliamentary committee did the same. They had perhaps grasped the point made by the American jurist, Leonard Hand:
>
> > "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help."

(Extension of time granted.)

Michael Sexton continued:

> It is, of course, always possible to remedy a particular social ill by specific legislation, such as the anti-discrimination laws that exist in all Australian jurisdictions.

The very point I was making earlier. The Solicitor-General goes on:

> But a general and nebulous bill of rights is not only inconsistent with parliamentary democracy, it is also a positive encouragement to a culture of litigation.

The final article that I am going to quote from was published in the *Canberra Times* on 1 September 2003, after the consultative committee had produced its report and before Mr Stanhope introduced his bill. So I am not going to talk about economic rights in respect of this article because they are irrelevant; Mr Stanhope does not have that. The article was written by Allan Hall, who may be known to some people. He is a former deputy president of the Commonwealth Administrative Appeals Tribunal. Mr Hall states:

> No-one doubts the need to protect our basic human rights; the debatable question is how that can best be achieved. Should we rely on the democratic process? Or should we give a greater role to the courts?
>
> Under the human-rights bill that is under consideration by the ACT Government, there are essentially two ways in which human rights are to be protected:

- By involving the Legislative Assembly, the courts and tribunals, and a proposed Human Rights Commissioner in ensuring, as far as practicable, that all territory laws, practices and procedures are compatible with human rights, and that they are interpreted and administered accordingly.

- By creating a new cause of action against public authorities who act or engage in conduct that is incompatible with human rights.

The Supreme Court will have a central role to play, having exclusive jurisdiction to determine whether or not a law is compatible with human rights, and whether or not a public authority has acted incompatibly with such rights.

Most media attention has focused on the power of the Supreme Court to make a declaration of incompatibility. When this occurs, the Attorney-General must table a written response in the Assembly. It is then up to the Assembly to decide whether or not the law should be changed so as to make it compatible with human rights. This procedure is designed to overcome the common objection that a Bill of Rights subverts the democratic process by transferring to the unelected judiciary the ultimate power to decide controversial human rights-issues that are better left in the hands of elected politicians.

While the Bill could achieve this in part, I see considerable danger of the judges becoming politicised and of the authority of the court being potentially weakened. This might lead to demands for a change in the manner in which judges are appointed, with persons nominated for appointments being subjected to searching questioning as to their personal views on contentious socio-political issues.

If the human-rights bill were to be enacted, the Supreme Court could be called on to decide, for example, whether legislation permitting abortion is compatible with the "inherent right to life". In my view, the judge would be in danger of being drawn into public controversy, whichever way he or she were to decide the case. If the judge made a declaration of incompatibility, expectations might be generated that the bill would be changed. If the Assembly was not prepared to do so, the principle of parliamentary supremacy might have been upheld, but at the risk of weakening respect for the court and its decision-making authority.

I regard that risk as unacceptable.

He then talked about some matters which do not pertain to this bill. He concluded:

I also agree with those who argue that a Bill of Rights focuses too much "on individual rights at the expense of social responsibility, community interest and social coherence", and that the proposed bill could encourage a culture where individual responsibility is discouraged, in favour of claiming rights through litigation.

More fundamentally, I am not convinced that a small body politic like the ACT, with a small population and limited finances, can afford the legal, administrative and other costs likely to be involved in implementing and enforcing the proposed Act. No other state or territory has adopted a Bill of Rights and, as recently as 1998 in Queensland and 2001 in New South Wales, parliamentary committees recommended against it. In my view, the ACT should not go it alone.

> If the Assembly wants to ensure better protection for human rights, the first step should be to conduct a comprehensive audit of legislation with a view to making the law and administrative practices compatible with human rights, as far as practicable. Areas where human rights are not adequately protected could be targeted, within available resources, and human-rights issues addressed as they arise.

Allan Hall is a very capable, learned gentleman who has held a very senior position. Like many others, he opposes a bill of rights and opposes this very dangerous social experiment the Chief Minister is leading us down.

Mr Speaker, when citizens of a country have very significant rights, any tinkering with those rights has to be done very carefully. These days, giving a certain group of people extra rights invariably means that some other group have their rights diminished. For example, rights that go too far in favour of criminals take away from the fundamental right of honest citizens to be protected by the laws of our land. And this is a real fear many have with any bill of rights here in the territory.

I have great difficulty in seeing how we can end up with a bill of rights that does not lead to all the inherent problems we have seen in other western democracies which have bills of rights. There is nothing in this bill of rights that has given me confidence that that is just not going to be the case. There are a number of problems which just jump out at you, and the opposition will be discussing those in the detail stage. There are some real difficulties.

The only safe outcome for the people of this territory is for this whole idea to be scrapped. I know that is not going to happen, and I think that is a real shame. I have a real fear that, far from enhancing people's rights, this bill, which will become an act, will actually affect adversely many more people's rights than it will positively impact on.

No other state or territory in Australia has gone down this path. It has been rejected comprehensively by the other Labor states. The most vehement opponent in Australia in relation to it is the New South Wales premier, and he is not Robinson Crusoe. It has failed at a federal level. The quasi referendum on a few points in relation to it in 1988 failed comprehensively. It is unnecessary.

Democracy is not perfect. But as I said to start with, we have a system that has evolved over 800 years. I do not think it is just pure patriotism that people who go overseas feel happy to come back to Australia, to see the coastline of Sydney appearing or to fly over the Northern Territory and see the Top End. It is a bit more than that, too. Australia is one of the greatest countries in the world. It is a great country because of the nature of the people; our wonderful institutions that have been nurtured, changed, improved, and are always evolving; and our system of law, conventions and culture. We have the ability to change and evolve conventions. We can change our laws when we need to do, so that we can keep up with what society wants. I think we have done that pretty well. We have done it pretty well in terms of rights, be they rights for the most disadvantaged in our community or general rights that affect everyone. These rights are set out in various acts.

If society changes, rights can be changed through acts of parliament. This should not be done and does not need to be done through this legislation. I challenge anyone to say that western democracies that have enacted bills of rights are now better off than they were

before. Carr goes into what happened in New Zealand and Canada and some of the decisions that have probably cost the community money and, when all is said and done, have not really done anything to enhance and advance rights. We have an excellent system. It continues to mature and adjust to changing times, as it has done for decades, and we tinker with it at our peril.

MS TUCKER (11.33): The Greens will be supporting the Human Rights Bill, although we are very disappointed by the limited scope of what we have been presented with. We have several amendments. I understand Ms Dundas is also moving an amendment to bring back social and economic rights, so I will not be moving that amendment, but obviously will be supporting Ms Dundas' as we have the same intention with regard to that issue. There is a very broad interest in seeing human rights integrated fully into the way government and the Assembly create laws and administer the territory. I will not be supporting Mr Stefaniak's amendments. As much as we all want to see the rights extended, to pick and choose rights from complete statements is a potentially dangerous way to proceed. Statements are crafted with balancing rights and implied responsibilities.

So why legislate protection for human rights? As much as we may like to believe that legislators will always bear in mind the basic principles that respect humanity and our responsibilities to each other when we live together in communities, it's a sad fact that in the heat of pursuit of particular goals, these are not always protected. The committee concluded that the perception of whether human rights were adequately protected in the ACT depends on whether one belonged to, or interacted with, the groups most vulnerable to rights abuses—for example, those with a limited advocacy capacity or those marginalised by the political process. The committee undertook an extensive analysis of the legislative, constitutional and international law basis for the protection of human rights in the ACT. Consistent with its terms of reference, the committee's analysis draws heavily on the submissions received from communities. Based on this analysis, the committee concluded that there is no comprehensive, sufficient or transparent protection of human rights within the ACT.

The main arguments put forward in favour of the Human Rights Act are that the existing legal protections for human rights do not act as broad statements conferring equal rights upon all; and the unicameral nature of the ACT government renders the ACT legislative process vulnerable to human rights concerns. It is noted that since 1989 the ACT has been run by a minority government and often the balance of power is in the hands of one or two people. An ACT bill of rights could constitute a baseline for political negotiations, or at least prompt a debate about human rights. I recall in the last Assembly with the victims of crime legislation that would certainly have been helpful with the Attorney-General as the chief law officer being prepared to support quite unacceptable amendments from the crossbench because of other goals he had at the time. Another argument in favour of the Human Rights Act is that it would be an accessible statement of community values, and would enable the community access to information on their rights and educate public authorities and others on appropriate rights respecting behaviours et cetera.

The committee, after its research, consultation, deliberative polls and informed consideration, proposed a dialogue model with some limited scope for compensation. Their model was based on the two main human rights conventions to which Australia is a party—the International Covenant on Civil and Political Rights, and the International

Covenant on Economic, Social and Cultural Rights. However, as I've said already, the government has backed away from this model, so the bill we're voting on today includes only the civil and political rights, and there are no rights to compensation or damages. The main objection to the inclusion of economic, social and cultural rights seemed to be a fear that there would be more direct obligations on departments and on government. This is quite disturbing. It would be entirely possible to set out targets, plans to be moving from where we are now towards a situation that is much more inclusive, much more equal in effect in terms of people's access to education, health and so on. I'll talk to this more later.

The Chief Minister has said that these other rights could be included down the track, and that this is only a starting point. I am certainly encouraged by that statement. I will be moving an amendment to this end in the detail stage. Even when we are implementing those two treaties, there would still be no explicit reference in the rights themselves to indigenous people, gay, lesbian or transgender people, the environment, people made vulnerable due to their health status, for example, mental health patients, aged—although children's rights are addressed—or socioeconomic status, for example, people on low incomes with inadequate access to political or legal representation. The preamble to the bill covers some of these specific areas of need. Point 7 refers to the special significance of human rights to indigenous people. Point 5 notes that the act encourages individuals to see themselves and each other as the holders of rights and as responsible for upholding the human rights of others. The question of responsibility is one I'll address further later as well, but it certainly does come up in the debate.

I will talk briefly now, though, about environmental rights. Although I'm disappointed that this bill is so narrowly defined and so restricted in its effect, I note that even in this limited version of human rights, there is established international case law on the connection between environmental rights and human rights. For example, from the right to life we can derive many of the needs to support healthy functioning complex ecosystems and biodiversity. Judge Weeremantry's separate opinion in the Gabcikovov-Nagymaros case in *Hungary v Slovakia* in 1997, was that:

> The protection of the environment is…a vital part of contemporary human rights doctrine. For it is a *sin qua non* for numerous human rights such as the right to health—

Which sadly we will not yet have legislated in the ACT—

> and the right to health itself. It is scarcely necessary to elaborate this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

The Australian Centre for Environmental Law at the ANU quoted this and other cases in its submission to the bill of rights consultative committee. That the health of the natural environment is fundamental to all we do is being brought home to us more and more as we see climate change progressing. We should not need instruments that require us to be mindful of the effects of all of our actions on the balances in the environment, but it seems that we do. A number of international statements relate to the needs of the environment. Agenda 21, for example, sets out a program for change. There is the Rio Declaration. Text could be used from the convention on biological diversity for example.

The Aarhus convention, to which Australia is unfortunately not a party, sets out clear statements about access to information on the environment. I looked at bringing at least the language of this treaty into the current bill but have been persuaded that at this stage there are better ways to comprehensively improve legal obligations, or at least remind us to protect the environment.

It would be very useful for the Australian government to sign up and then we would be more involved in the ongoing development of the interpretation of the treaty in case law. I'm not convinced that our Freedom of Information Act and our Environment Protection Act give us the full bottle on the rights in Aarhus. This should be part of the reviews in the future. The environment commissioner could be given a specific role in identifying problems with environment-related human rights. This would be useful even under this version, but as we are in the midst of a review of the role of the office of Commissioner for the Environment it seems better to wait. I believe the Human Rights Act is an important step not only for the ACT but for Australia, despite the fact that it is limited at this point to civil and political rights. My amendment, which ensures a review in 12 months to look at bringing in economic, cultural, and social rights, hopefully will have support and lead to the Act being broadened. It is disappointing that the government lost courage on this, and it is hard to understand given that this model is so timid, and given that damages have been removed also.

This bill creates a situation where there will be a dialogue on questions of rights, particularly between branches of government and the community. It requires government to explain itself. I note with interest that some opponents of this bill see it as somehow promoting an individual rights argument versus a community-broad collective rights dialogue and that it fails to acknowledge the need for responsibility to be taken by people. On the contrary, this bill is very much about responsibilities. To quote from the human rights manual which was a production of the Department of Foreign Affairs and Trade in 1998 and signed by Mr Downer:

> Human Rights and fundamental freedoms are the birthright of all human beings, their protection and promotion is the first responsibility of governments.

In the same section of this manual the point is made:

> The World Conference on Human Rights reaffirms that everyone without distinction of any kind is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country.

In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 convention relating to the status of refugees, its 1967 protocol and regional instruments. I refer to this because I want to illustrate how I see the notion of responsibility as central. Not only is this a responsibility of government; it is a responsibility of the community to ensure agreed-upon rights are accorded to members of society. While Mr Downer signed this document, it is obviously arguable whether his government has respected its content and its policy on refugees. It is clear that our current legal system does not always protect people from human rights violations. The point was made very clearly to me on several occasions while talking to children who have spent most of their lives behind razor wire in Australia. The point was also made very clearly in correspondence with Mr Downer about diminished rights to protest

outside the Chinese Embassy on ACT land when the Chinese Trade Minister was in Canberra.

As I have said before, the perception of whether human rights are adequately protected in our community depends very much on whether a person is vulnerable to rights abuses. The dialogue around social and economic rights would have had important normative and educative value for public, private, and community sectors. The argument that somehow it would spin out of control does not stand up to scrutiny. Any decisions made are always informed by relative capacity and in the context of promoting the general welfare of a democratic society. Few rights are absolute, and reasonable limits on rights are justifiable in a free and democratic society. I find it surprising anyone would have a problem with a statement of right to health, education, shelter, and cultural life. The legislature is still supreme in this model. There is no substance in allegations that somehow through the Human Rights Act we are transferring control to judges.

Looking at experience in other jurisdictions and the proposed act here, which has a co-operative approach to policy making, the consequences are positive in that such legislation improves governance and policy making. It creates an opportunity for review and improvement of existing legislation as has happened in Hong Kong and the UK as well as guiding new legislation and policy. It is clear that in the UK, whose Human Rights Act 1998 contains the right to property and the right to education, and in other jurisdictions where claims have been made relating to social, economic, or cultural rights, there is a significant body of jurisprudence which would provide assistance and interpretation. It is incorrect to suggest this is not so. Canadian and UK courts have respected the role of legislators. South Africa also has much to offer here. Byrnes from ANU and Maxwell from Owen Dixon Chambers say:

> Any assessment of the likely impact of the Human Rights Act must be informed by the considerable body of jurisprudence which has developed over the last 30 years regarding the interpretation of human rights guarantees. This invaluable body of precedent on which Australian courts already draw comprises decisions of the European Court of Human Rights and other international human rights courts and tribunals, decisions of the United Nations, human rights treaties, bodies, and decisions of national courts interpreting human rights standards.

The evidence does not support the claim that jurisdictions have heavily awarded damages for breaches of human rights guarantees. Also, very few damages awards were made in New Zealand and all for very modest amounts. In summary, this bill is more like running a magnifying glass over our legislation. It provides a moral costing. It can highlight problems before they arise by framing arguments in a more accountable way. It is nothing to be afraid of. Democracy works because people take agency and put arguments up. But the disempowered are less likely to do this—the homeless and the marginalised. Human rights are not, as sometimes caricatured, egotistical and individualistic with no capacity to recognise the common good. It is much more about communitarianism, and maybe that's why the Liberals don't like it. It's much more about communitarianism than individualism, requiring above all an understanding of common ethical values.

Responsibility is inherent in the notion of rights. If human rights are conditions necessary for people to live lives of dignity and value there is a responsibility to support these conditions, not just government and the public authorities but the whole

community. This legislation is a statement of those rights. It's enabling a dialogue about those rights when there is concern that those rights are being breached. I'm proud to be supporting it even though it is in a very limited form at this point.

MR PRATT (11.48): I support Mr Stefaniak's argument against the bill of rights to indicate why I believe the bill of rights is absolutely unnecessary and, indeed, damaging. Magna Carta, and of course later William of Orange's bill of rights of 1688, set in train a very solid foundation in the western democratic system for the enshrinement of rights. The legal system that developed through those centuries was inherited by our forefathers. That system went to great lengths to protect the rights of Australian residents. From that inherited system we in this country enjoy one of the best systems of rights in the world. When one looks at the rights that we enjoy here, and have always enjoyed, compared to the rights of people around the world, I wonder what we are whinging about here today.

There are people around the world who don't even have the right to eat. There are people in other countries who don't have a society which is able to deliver them the right to be protected in their villages, their towns and their districts. They don't even have the right to live in safety because they don't have the good governance provisions in place for a safe society. Therefore, a bill of rights is superfluous. What we're arguing here is that Australian citizens enjoy excellent rights and we have good systems in place that don't need to be added to or tampered with. We don't need any value adding. A bill of rights will introduce another layer of bureaucracy. It will introduce yet another system of law. It will add to the lantana which is Australia's legal fabric. We don't need that extra layer of mechanism. It will be costly, it will be time-consuming, it would tie up the courts, it would tie up court time and tie up the time of lawyers.

There are two other matters here. Such a bill and such an extra layer of law will be manipulated by lawyers pursuing political objectives. We will see the parliamentary process circumvented by political lobby groups and legal lobby groups with axes to grind. We'll see the Stephen Hoppers in Australia tying up valuable court time pursuing spurious issues and taking away from the courts the time needed to focus on fundamental rights issue. We'll see a litigation culture develop. As Mr Stefaniak said earlier, this will encourage a stronger litigation culture, a culture which will be even more destructive to the fabric of our society, a sort of culture where only lawyers and particular lobby groups benefit but people don't. All persons have a responsibility to be law-abiding citizens, to be loyal to their country and their community and to pull their weight in society. They all have a responsibility to lend a hand to those in the community who need help or who are vulnerable. That is already enshrined in our society, those dynamics are already there. The fundamental dynamic of good society has been gradually eroded over recent years and replaced by a culture of gimme my rights. I could sing that, but I won't. A certain selfishness has eroded the fabric of society. Now the Chief Minister wants to throw petrol on that fire. For his own selfish and naive political reasons he wants to enshrine this gimme my rights culture.

The bill of rights will remove the power of responsibility and powers away from the elected legislature and will give to an unelected judiciary, our Supreme Court, powers that it doesn't necessarily need. The courts will become like honey pots to the irresponsibly politically driven legal fraternity that I just discussed a few minutes ago. Courts will then be able to make judgments on such spurious causes which otherwise would not deserve the time, energy and cost that they will attract. Important community

concerns will be pushed aside. An incredible amount of time and energy has been spent by this government on pursuing this bill of rights. Not only has this been a waste of time, energy and cost which should have been spent on community core issues, defending the rights of citizens, this government has demonstrated its failure to defend the rights of our community right across the spectrum. This government has demonstrated little interest in acting responsibly to defend the rights of the general community but instead is fiddling around with this rubbish left-wing stuff purportedly to defend the rights of their minor lobby interest groups who already have a plethora of rights to defend their own interests and their own causes.

Let's have a quick look at the litany of rights that have or are being neglected simply through a failure of good governance. I talk about the rights of the citizens of Macarthur and Fadden to be consulted over the plans to develop Karralika. There's a good example of rights being trampled. What about the rights of the residents of Conder and the southern district to be serviced by a general practitioner? This government has fluffed around for two and a half years on this issue. Where is its drive, where is its energy to enshrine the rights to have a basic GP service? A bill of rights, that's where the energy has gone.

What about the rights of emergency services personnel to be adequately equipped? Recently we saw the Canberra community fire unit on stand to on a day of high bushfire danger. Yet they were not personally equipped. What about the rights of these people to be personally equipped to be able to fight? What about the rights of all emergency services personnel across the spectrum to be adequately equipped with good communications equipment? This government has failed over two and a half years to get to grips with an outstanding issue such as that. What about the rights of ACT citizens to be protected against bushfire and adequately warned of impending danger? Questions are now swirling around this government about its failure perhaps to exercise its responsibility to protect the rights of the citizens of Duffy and Chapman. This is an issue we have yet to see develop.

What about the rights of the unborn child? No, this government will enshrine in this bill of rights that life will only commence after birth. What about the rights of the unborn? We don't see any action by the government to enshrine the rights of the unborn. What about the rights of students to be able to choose the schools of their choice? This government is tightening the vice on a system which guarantees the freedom and the rights of families to choose schooling by impeding funding arrangements which would allow diversity and choice to be enshrined in the ACT education system. What about the rights of Tuggeranong College students, who are seeing their rights not to pay for parking when they go to school—consistent with the rights of all ACT students—trampled?

What about the rights of victims? At 5.8 per cent we have the second-highest rate of assault victimisation in the country. We have the highest increase in this country of motor vehicle theft, which has increased by 40 per cent over four years. Personal victim crime rates are the second-highest in the country. A recent murder case resulted from a very straightforward and vicious intent by an assailant who should not have been free on the streets. This case raises alarming questions about the assailant's history of violence. The assailant's rights were well looked after. Perhaps a bill of rights could further extend provisions of freedom to this assailant and other like-minded criminals. What about the

rights of this assailant's victim? What about the rights of this poor old man's widow? Where is the government's plan to protect the victims of crime? No such programs focus on the fundamental defence of the rights of victims because they are being shoved aside in favour of the spurious actions of this government to produce a bill of rights because it is far more important for the Stanhope Government to dabble in boutique leftist programs upholding the rights of criminal victims than it is to enshrine the defence of the rights of the greater majority.

MRS CROSS (11.58): When the Chief Minister presented this bill last November he said among other things that "Australia is a human rights backwater". How unfair a comment to make about a country that is acknowledged as one of the world's leading successful democracies and as one of the two most successful modern multicultural societies in the world. I find this endless sowing of divisiveness at every speech-making occasion disturbing in a responsible civic leader. On the same occasion the Chief Minister said that development of the bill benefited from the experience of comparable jurisdictions such as New Zealand and so forth. Is this meant to be a trump card? Is this some sign of endorsement from a wider membership of the international community? Whatever it means, it makes the assumption that what New Zealand and the other countries have done has turned out to be some sort of ideal. You wouldn't cite the country if you didn't think that. Let's look at the reaction from another responsible civic leader to one of the effects of the New Zealand bill of rights:

> In New Zealand, in the first seven years after the Bill of Rights was enacted, it was invoked by the accused in literally thousands of criminal law cases…[and it] continues to be routinely used as a ground for attempting to overturn the admissibility of evidence, including confessions, evidence obtained under search warrants, and breath-testing of drunk drivers.

It was Bob Carr, Premier of New South Wales, who made that comment after a thorough study of the benefit and practical usefulness of a bill of rights. Let me now relate a pertinent anecdote or two—first one from Premier Carr:

> An Australian prisoner went to court a few years ago claiming his human rights were violated under the International Covenant of Civil and Political Rights. What was his complaint? There was not enough choice in the prison's vegetarian menu. What do you think the outcome was? Well, the court threw it out. Under Australian law the treaty was unenforceable.

In other words, the Australian law was able to recognise clear idiocy. Now for something initiated in Queensland a few months ago. You might know of a notorious armed robber called Brendan Abbott, an extremely dangerous person and violent escapee from prison in 1977—a man facing 25 years in jail. In short, not someone who could normally expect to be treated in other than a strict way and within appropriate guidelines. If his name does not ring a bell you may recognise him by his nickname, the postcard bandit. At present he is in solitary confinement, which, under Queensland criminal law, can be imposed on that state's most dangerous criminals subject to six-monthly reviews. Mr Abbott does not wish to be in solitary confinement, he doesn't like that at all. He is not too happy about that. What is this vicious bandit doing about it? Obviously Queensland's criminal law is no good to him because it won't do what he wants. So he has sent his lawyer off to no lesser body than the United Nations to complain that Abbott is a political prisoner and is being subjected to harsh and inhumane treatment. What was the

comment of the President of the United Nations Association of Australia on this hilarious turn of events? "It is a case the UN will take seriously," she said. Of course, she must have been speaking tongue in cheek because any normal person would have seen it for the joke that it is.

Another aspect of this requires comment. In a press release on this matter the Chief Minister made a link between this proposed bill and the detainees at Guantanamo Bay. I could not believe I saw that. Let me take a moment to comment on the matter of the detainees at Guantanamo Bay because I think the agitation on their behalf is misguided. Take David Hicks, who many, without any reference to facts, or with deliberate avoidance of facts, claim to be an innocent misguided lad who just happened to be in the wrong place at the wrong time. Yet his father, who was sponsored by the ABC to retrace the steps of his son's odyssey in search of himself, confirmed in a radio interview from the cage that he had set up in New York after that trip that his son had trained with al Qaeda. I heard the interview myself. So, if we are to keep the debate honest, the quibbling over whether Hicks had a link with al Qaeda should stop now. Al Qaeda is not a boy scout jamboree. It's members are in a direct line of descent from the assassin sect of Islam whose terrorism seethed through the Middle East during the 12th and 13th centuries. Surely we are not so naive that we are incapable of recognising the true evil of that and the obvious unacceptability of such a relationship to the fundamental values of this community that the Chief Minister says is a human rights backwater.

What about Mamdouh Habib? Remember what a different angry man he had been in his business dealings, in his fanaticism that alienated acquaintances to the point where the members of his mosque community distanced themselves from him. Then he went away. His wife, Maha, later took up the story with the press. She told how he said there were too many infidels in this country and that he was going to Pakistan to find an Islamic school for his children to attend in a pure Islamic environment away from the infidels. He was gone a long time; his wife had no news. She worried and wrote to the Pakistani government to seek approval to migrate to that country because she said there were too many infidels in Australia. She received no answer from the Pakistani government. She set in train through DFAT a search for her husband. DFAT eventually learnt that Pakistan authorities had nabbed Habib when he was crossing the border from Afghanistan into Pakistan and handed him over to Egypt because he is an Egyptian citizen. DFAT tried for quite some time to get information about him from the Egyptian government without much luck, learning finally that he had been returned from Egypt back into custody in Pakistan and then handed over by the Pakistanis to the US authorities.

Interesting little story, isn't it? Arrested by Pakistan authorities and no doubt questioned, sent to his country of citizenship, Egypt, whose authorities apparently wanted nothing to do with him after holding him there for some considerable time and no doubt asking him a lot of questions. Finally he was returned to Pakistan for handing over to the US for further interrogation. According to his dedicated supporters, who do not possess a shred of evidence, this is all because of some simple misunderstanding. Maybe that is so. But obviously Pakistan and his home country of Egypt don't think so. The truth will emerge in time through prolonged questioning, which will basically depend on how co-operative this fanatical hater chooses to be. At this stage I for one agree with the governments of both countries whose citizenship he holds and I'm not ready to look on him as a victim without evidence to that effect.

What strange people some Australians are. Despite Mamdouh Habib's acknowledged fanaticism and openly expressed hatred of infidel Australians, and despite his wife's open expression of the same attitude, she was feted by being brought to Federal Parliament by one of its senators to be present for the visit of the President of the United States and to witness the infantile antics of that same senator, and for her son from the same position of privilege to then join in with a bit of his own strident commentary to the President. She was being used as a tool to try to embarrass the hated Australia. She had been well schooled in handling the media, as had her son. When interviewed by the press after the occasion, Maha Habib told how her son "nearly had the shirt ripped off his back" by security personnel. I would like to see how "nearly ripped off his back" that shirt really was. Just a few weeks after his parliamentary debut, this same son was arrested in Sydney on a charge of unlawfully seizing, tying up and detaining a young woman, the 18-year-old twin sister of a friend of his, and then along with the friend and another young man, cutting off her long hair and then shaving her head. It seems that she had left the family home a little while back. It is an interesting episode with three brave young Australian males seizing the hapless young woman and tying her up like a beast, with her brother initially wanting to stuff her in the boot of the car. It seems that Mamdouh Habib has done a damned good job of raising his son.

It will be interesting, in this rights-rampant society, to see who will get the prize of being accorded the status of victim in this incident. Of course, under the law that reflects the values we live by, a blatantly criminal act has been committed and given that the perpetrators were adults, it should be punished by the full force of the law. I hope that is what happens, as it is very clear who is the victim in this case of disgusting conduct. But stranger things have happened. I have no doubt there will be those who try to wrap our new young celebrity, our very own model of a young Australian male, in a mantle of victimhood. We'll wait and see whether some creative lawyer comes up with the excuse that the young Habib was upset because his daddy ran away to play with assassins.

Matters to do with rights are bigger than wringing the hands over cases where non-innocent individuals have been entirely responsible for their choices in, say, going off to run around the hills with al Qaeda or popping back to the old country to pick up a batch of drugs to smuggle into Australia and poison a few more of the weaker members of our community, or breaking into someone's home yet subsequently being rewarded by the community through its courts for some bruising inflicted by the homeowner who probably, and maybe justifiably, feared for his or her life, or going about defacing the property of individuals and the community as some sort of expression of their individual right to express themselves in a uniquely expressive manner. A majority of members of this Assembly have already affirmed that people in the ACT have no legal rights to protect their property against being defaced and vandalised, yet only recently the Chief Minister publicly stated that he abhorred vandalism. How can the Chief Minister sit between such opposing positions? I confess it beats me.

When I think of rights I think of something like the performance over the past 50 years of the United Nations, an organisation that was originally established primarily as a security organisation. Its security council has only twice authorised military action: first for the Korean War—and then only because the Soviet Union walked out and lost its right to veto—and secondly for the 1991 Gulf War to drive Saddam Hussein's rapacious and brutal invading and occupying forces out of Kuwait. That is its shining record. Yet

over those 50 years, while the endlessly praised United Nations has been bound by its impotence, millions have died at the hands of madmen, tyrants and sadists whose nations in the main had high-minded constitutions that claimed to ensure all sorts of rights. They had the proper bits of paper, but the bits of paper did not prevent millions being massacred. From Armenia to Afghanistan to Angola, Russia to Rwanda, Somalia to Sudan, Ethiopia to Eritrea, Korea to Kenya to Kurdistan, Zimbabwe to Zanzibar to Zaire, from China to Cambodia to Congo to Colombia to Cuba, and on our own doorstep to tiny East Timor, with an estimated 200,000 alone. Think of that for a moment. That's equivalent to the population of Greater Geelong wiped from the face of the earth like so much dust. Yet we averted our eyes for decades.

This horrendous list of monstrosities goes on and on and has gone on while the torch of human rights has been held aloft by all those who in their worship of the light seem to have been blinded by it. The real horrors were happening in the shadows all around them and they were afraid to acknowledge that fact, walk into the dark and stop it happening. It has been easier to worship the light and pretend that what was in the shadows would go away. I think of how over recent decades the souls of hundreds of thousands of Iraqis alone have been snatched away by the inhumane regime of Saddam Hussein and of how the crushed, broken, blinded, raped, stabbed, strangled, shot. poisoned and gassed poor, sad, abandoned shells of his slaughtered victims have been silently blending with the blood-soaked soil, their mouths and eyes and ears slowly filling with the ancient sands of Iraq. These are the images that haunt me and drive me to ask, What about their rights? Why is it that the so-called rights of these departed souls seem to have been worth so little?

When someone wants to do something about that, when someone has the courage to take action to stop the endless, sickening obscenity, to try to bring something better to those who have been brutalised and had their rights stripped from them, who have been treated and killed like animals, why is it that those who strut about attending conventions and drafting new lists of rights and engaging in meaningful, sophisticated, international dialogue and lecturing democratic communities on those rights and telling them what's good for them never come up with the answer of how to ensure the rights of the innocent and the vulnerable—except to trot out inane mantras like "War is never the answer". If that is so then what is the answer? More hollow platitudes, more lists of rights, more bits of paper, more international dialogue between hobbyhorse academics, more verbal waffling and self-congratulation, more endless whining about how ashamed they are?

I have never heard from the apologists for the doers of evil, from the appeasers of creatures like Saddam Hussein, a single suggestion that was worth uttering in the first place. *(Extension of time granted.)* Instead, they wrap themselves in a cape of self-righteousness and, knowing they do not have it in themselves to do something concrete, proceed from the comfort of their ivory towers to chant endless criticism of those who are willing to confront evil head on, who know from our long and sometimes tragic history that you can't appease evil, you can't bargain with the devil and win. They will continue to harp on new and more legislation for rights, to claim that only such legislation can guarantee rights.

There is something wrong here. The body of universal rights legislation was developed over the decades following the Second World War and it bred and reproduced all over the place. It has hardly mattered a damn in practice. Instead it has been open slather for

the mass murderers for decades. As things stand it still is, and looks as if it will continue to be so unless someone has the courage to ensure they abide by their grand bits of paper. That's the reality with which we live, a reality in which no proliferation of bits of paper will ever ensure rights. The only thing that can ensure rights is a community, and the level of rights enjoyed by a community depends on the quality of the community and of its leadership, on its commonly held traditions, values, beliefs, knowledge, wisdom and sense of equality and fairness, usually evolved over a long and sometimes arduous process. So far that is the system that has delivered the best for us. It is like a vibrant living thing that has grown with us over many centuries and is part of what we are. It has been created by the community itself in order to maintain the continuity and wellbeing of the community and, most significantly, it has not been imposed upon the community in the way this proposed legislation seems bent on imposing itself—and with a little help from its friends.

We have entered very serious times. The assassins are abroad again, having been resurrected by the persistent failure and continuing backwardness of the societies that have scorned them. They wallow in envy, resentment and a sense of victimhood, abetted by those in societies like ours who posture behind platitudes. Being merely sideline critics who won't get onto the field themselves, they limit their participation to braying at those on the field who are making decisions and shouldering responsibilities. Nothing is ever right for them. In their arrogance they falsely assume an expertise knowing that they will not be called upon to test it out where the going is a bit tougher. Those who sit on the sideline talk of dialogue, of alternative methods of so-called conflict resolution, though they never spell out what those methods might be. They speak of dialogue. Dialogue with whom? With the assassins? How could that be possible? How would it be possible to engage in a dialogue with pure hatred made flesh?

By the same token, how will the existence of lists of rights influence the conduct of those who permit no rights to anyone, anywhere, anytime, to whom mass, indiscriminate killing is as natural as taking a drink of water? That's who we are dealing with today, within our society as well as outside it. That is our overriding concern now because this is the direction from which the extermination of rights will come. Yet while the assassins are out and about festooning the walls of buildings and cafes and footpaths and fences, and wedding gowns and schoolbags and branches of trees, and rosebushes throughout the world, with bits of flesh and brains and tatters of rags and babies' bracelets and booties, we are comfortably engaging in what I have to say is an exercise in little more than self-aggrandisement while at the same time, and at every turn, day in and day out, the sniping goes on against the democratically elected national government that is obliged under its mandate to do all that is practicable to ensure the security of the nation and its people.

Among the tools needed for the arduous task of national security, no doubt for quite some time to come, are the legal means to step up security measures to undertake surveillance to identify likely threats, to take suspects into custody and hold them there, to conduct searches and so on—fundamental security measures that any sensible person would feel comforted to see in place, the sort of essential measures that seem invariably to send the more extreme civil libertarians into a frothing frenzy. We have a right to protect ourselves vigorously, even aggressively if needs be, and we need the means to do that. The introduction of a bill of rights such as that being proposed would, as is evident in the comments of Premier Carr cited above, introduce a frustrating obstacle to the performance of basic security functions designed to enable the responsible authorities, on

behalf of the community that tasks and sustains them, to do the utmost to protect the community from menace. I'm certain that if they were to do less than their utmost to protect the community, they would be subjected to denunciation by the very people who work to reduce their capacity to provide that protection, that is, the carping, self-righteous know-alls.

On this quite critical matter, I draw attention to an item that recently appeared in the paper regarding the recently proposed changes to internal security laws to allow holding of a suspect for 48 hours instead of 24 in cases where language problems would require the use of interpreters. One Professor Rothwell of Sydney university said that the amendments would be a clear contravention of article 26 of the International Covenant of Civil and Political Rights, which says that all persons are equal before the law and prohibits discrimination on the basis of language among other things. He added:

> It would seem to me that inserting a provision into Australian law which would allow for someone who doesn't have English as a first language to be subject to a maximum of 48 hours of interrogation and questioning…is a clear distinction or discrimination, and would therefore be a clear breach of the convention.

He went on to suggest that any Australians subject to those laws would have a right to complain to the human rights committee. On the other hand, the government has said it has checked and the amendment does not breach the covenant, adding that the human rights committee has repeatedly explained that differential treatment is not discriminating "so long as the distinction in treatment is based on objective and reasonable criteria". It looks to me like Professor Rothwell's hobbyhorse just fell over. I conclude this comment by explaining what to any person with half a wit would, on the basis of grade two arithmetic, constitute objective and reasonable criteria in this case. With an English-speaking suspect, the conversation involves only two people. Speaker A directly to speaker B then back to speaker A. That is two-way. Where an interpreter is involved, the conversation goes like this: speaker A to interpreter to speaker B, to interpreter and back to speaker A. That makes four links instead of two. By an elaborate process of deduction which is apparently beyond the intellectual capacity of our ever so concerned Professor Rothwell, the conclusion can fairly confidently be drawn that exchanges involving an interpreter will take twice as long as those directly between two people, thus requiring an increase from 24 to 48 hours. It seems pretty logical to me. *(Further extension of time granted.)*

The most worrying part of this little demonstration of stupidity by a man who was referred to in the article as an international law expert is what I guess is a bit of politicisation of what is nothing more than a practical measure to anyone who is not one-eyed. That is what I fear from the rights trumpeters in our present serious times, when those responsible for ensuring our security need effective tools to keep us secure. Whatever makes that task harder for them to perform is counterproductive, and serves the menace we confront, and I am against it. One can't expect people to carry out such critical tasks properly if there are those like our good professor waiting for every opportunity to hobble them. I foresee in this present obsession with rights, as opposed to responsibilities and obligations, the potential for the incessant intrusion of judicial activism, whether it succeeds or not to a degree where it will hinder rather than help the efficient and timely conduct of legal proceedings as it has done for some years now. We

cannot afford such an indulgence if we are genuine about protecting the rights of the majority of the community in time of heightened threat.

Allow me to comment further on how we should be adjusting the balance between rights and responsibilities. Late last year, Premier Carr took his usual non-ethereal approach to the obligation he has to try to protect the rights of the broad community against white-anting by narrowly focused rights activism by putting through a batch of legislative changes that have tipped the scales towards individual responsibilities instead of almost blatant individual rights. It will be gratefully welcomed by the people who for some time have thirsted for a government to take this bull by the horns. In practice, this means that the sort of activism-riddled legal environment that will be created by this proposed legislation before the ACT Assembly, is not the legal environment that is sought by the people in general.

One final thing is a question. Where in all the words of this proposal and the effusive claims being made for its urgent implementation can we find the evidence of so many transgressions against rights in the ACT in recent years that this proposed legislation is seen as essential? In a recent letter Bishop George Browning wrote:

> The proposers of the Bill have done little or nothing…to explain what wrong is being righted by the Bill, or indeed in what way citizens of Canberra will be better off or more secure…after the Bill has passed.

He went on:

> …it is the responsibility of Government to indicate what gains are so overwhelmingly obvious as to necessitate the Bill being placed before the Parliament.

If the evidence is not enough to confirm that this legislation is essential to the legislative health of the ACT, it should not be proceeded with and the Assembly should address itself to matters of a less self-indulgent nature. We need to maintain and strengthen our liberal democratic society by clawing it back from the libertarians who would ultimately turn our society on its head and weaken it. On this point I quote Bishop George Browning again, when he says:

> Let me move to the relationship between legislation and litigation. It would take a great deal of convincing most in society that legislation and litigation don't relate closely, especially legislation that is aimed at strengthening the position of the individual at the expense of the community.

I share that view of what the majority thinks, despite the Chief Minister's claim last November that this bill is a carefully crafted bill and has been the subject of extensive consultation in the community. I don't know what the phrase "extensive consultation" means any more. I wonder if the extensive consultation regarding this bill was greater than the extensive community consultation undertaken over the Karralika rehabilitation centre or over the siting of the new ACT prison near Jerrabomberra. I ask a final related question. What level of regard was given to the rights of ACT citizens who would inevitably be adversely affected by those planned developments? From what I have seen, their rights to proper consultation were dismissed, but it seems that some rights count

more than others. The rights of the minor seem to prevail over the major. I think that is heading our society in the wrong direction entirely, so I won't be supporting this bill.

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

Sitting suspended from 12.27 to 2.30 pm.

Questions without notice

Bushfires—warnings

MR SMYTH: My question is to the Chief Minister. On 18 February 2003, in response to a question from Ms Tucker about the McLeod inquiry, you stated:

> As you said, the terms of reference are broad. They are all-encompassing. That was the government's intention. There is no aspect that I do not want Mr McLeod to look into. I am happy for him to look at every aspect of the response of the Emergency Services Bureau, the ACT Fire Brigade, ACT fire services, ACT police, the department of the environment and ACT Forests. Each of those possibilities is explicitly mentioned in the terms of reference.

The coronial inquest into the 2003 bushfires has revealed information that is at odds with both the McLeod report and statements made in this place. Do you stand by all the statements you have made in this place regarding the bushfires of January 2003?

MR STANHOPE: The McLeod inquiry was certainly all-encompassing and untrammelled. The terms of reference were extremely wide. I was reading from them—I believe—in the quote that Mr Smyth just made. That was a direct quote by me from the terms of reference of the McLeod inquiry.

My understanding—and I am more than happy to check it—is that Mr McLeod had access to any information that he sought or required. He had access—as I understand it—to any public official or to any person with information that was relevant to his inquiry, to his terms of reference. I am not aware of any request that Mr McLeod made that was not met. But I am more than happy to check that, and I will.

My understanding is that Mr McLeod's terms of reference, which members have available to them, were incredibly wide. At no stage did I attempt, in any way, to curtail his activities or his inquiry. I am not aware that at any stage any request that he made was refused. I am not aware that any stage any request for information or access to any official was not complied with.

Yes it was a wide inquiry. I, of course, had no control—nor did members of the government—over the direction that Mr McLeod took, the issues that he sought to inquire into, or the officials he sought to have meetings with; they were matters very much at the discretion of Mr McLeod.

I am not aware of any statement I have made in this place that was not correct. If you or anybody is aware of any statement I have made that is not correct, then I am more than happy to investigate it immediately and to correct the record. I have not at any stage said

anything in this place that I did not at the time believe to be absolutely true. If there is a statement I may have made, I am more than happy for anybody to draw it to my attention. I will investigate it. If the record is wrong, I am more than happy to correct it. But as I say, I am not aware of anything that I have ever said in this place that was not—at the time I made it or said it—to my mind absolutely true.

MR SMYTH: I ask a supplementary question, which the Chief Minister may have answered. Are you assuring the Assembly that all the statements you have made in this place regarding the bushfires are accurate?

MR STANHOPE: I always tell the truth. As I just said, I am not aware of anything that I have said—nor has anybody drawn to my attention anything that I have said—that was not true when I said it. It may be that other people are saying things that might conflict with something I said. It may be that other people are making assertions or statements that may not be consistent with something that I said; I have no way of knowing that.

I have to say—I have indicated this previously—that I am not monitoring every word that is said in the coronial inquest. I am not second-guessing it; I am waiting patiently for the outcome of the coronial inquest. I am not making judgment on particular evidence given. We know the process and—I have indicated this before—I have some real concern around the way evidence being presented to the coroner is being treated outside the court. It is fundamentally important that we respect the coronial process; that we respect the rights of witnesses appearing—

Mr Smyth: You didn't when the hospital implosion was being run.

MR STANHOPE: You go back and have a look at the records in this place in relation to that. The then opposition did not stand up in this place and second-guess or beg questions in relation to evidence that was being given on a day-to-day basis in the coronial inquest; we did not do that. It is important to respect the process. Evidence is being given; claims are being made by certain witnesses that so-and-so said this. Those witnesses are yet to be called and examined.

In all fairness, it is important that we wait for the report, for all the witnesses to be called, for all the cross-examination to be conducted, and for the coronial process to run its course.

Trees on Nettlefold Street, Belconnen

MS TUCKER: My question is to Minister Corbell as Minister for Planning and is in regard to the motion of the Assembly of 27 August 2003 calling on the minister to negotiate with the owner of the property on Nettlefold Street, block 12, section 2, Belconnen, about the potential for exchanging the land for another site because of the trees that were on the Nettlefold Street block. Can you table in the Assembly by the end of this sitting week all records of the communication you have had with that owner and any agents or managers engaged by the owner since that motion was passed?

MR CORBELL: As I have previously indicated to members, following the censure resolution of the Assembly last year, I arranged for my office to contact the agent who represented the leaseholders of that site and indicate to that person that government wish

to discuss the possibility of a land swap for that site. The agent undertook to pass that advice to the leaseholders. The leaseholders did not make any communication back to the agent, to me or to my office. It was pretty clear from that response that the leaseholders intended to pursue development of that site. I am happy to make available to members any relevant document that I have.

MS TUCKER: I have a supplementary question, Mr Speaker. Following up on the nature of that communication and the detail that was in the proposal you were making, could you table any documents relating to the costing of the land swap or other details of the proposal that you were making to the owner of the land?

MR CORBELL: These discussions did not get past first base. The government indicated to the leaseholders that it wished to discuss the possibility of the land swap and wanted to know whether or not the leaseholders themselves were interested in such a proposal. As there was no indication from the leaseholders that they were interested in such a proposal, the government did not pursue the matter further or go to the stage that Ms Tucker requests of me of investigating financial feasibility or alternative sites. We simply indicated, as a first starting point, to the leaseholders that we wished to discuss the possibility of a land swap. Were the leaseholders interested in pursuing such discussions in principle? They indicated through their lack of reply that they were not.

Bushfires—declaration of a state of emergency

MR STEFANIAK: My question is to the Chief Minister. On 19 August 2003 I asked you in a supplementary question whether the cabinet had made any decisions on 16 January 2003, when it was briefed that Canberra faced a one in 20-year bushfire with one in 40-year extreme weather forecasts and that urban areas were under threat. You replied:

> The cabinet did not, Mr Speaker.

In fact, the cabinet minutes show that the cabinet decided a number of things, including noting the procedures for declaring a state of emergency on the presumption that you or the cabinet as a whole may have to consider declaring a state of emergency over the coming days. Do you stand by your answer to me that you gave in this place on 19 August 2003?

MR STANHOPE: Mr Speaker, I am more than happy to look at the *Hansard* in relation to that. The cabinet certainly made no decisions in relation to the management of the fire. As Mr Stefaniak indicates, the cabinet minute of the briefing notes a number of things. It does note that it may be necessary for the cabinet to reconvene. It does note that there was a discussion about a state of emergency. I think it does note that there was a discussion about the costs of the fire to date. I think it does note something else.

But certainly I stand by the answer to the extent that I obviously understood at the time. As I say, I will go back to the *Hansard.* The cabinet made no decisions in relation to, as I might call it, operational aspects of the fire. The cabinet noted the steps that the Emergency Services Bureau was taking in relation to the fighting of a fire, and it noted that there were a range of possibilities and issues around the fire that arose out of the fact that the matter had come before the cabinet as a briefing.

MR STEFANIAK: Mr Speaker, I ask a supplementary question. Chief Minister, why didn't you ensure that the public received adequate warning of the serious threat the bushfires posed, given that you were advised that the fires might be serious enough for you to consider declaring a state of emergency?

MR STANHOPE: Once again, Mr Speaker, I do need to put on the record that I have been called to give evidence before the coronial inquest next Monday. I have absolutely no doubt that these are the questions that the counsel assisting the coroner will be asking me in the Coroners Court next Monday. I do know that the shadow Attorney does have some understanding of processes in relation to courts and the operation of courts.

Mr Speaker, before I go on further, I might just say for the record that there really is a matter for some real concern in questioning of this nature a week before I am due to give evidence to the coroner. I have absolutely no doubt that the question that Mr Stefaniak just asked in this place will be asked again by counsel assisting the coroner.

Mr Speaker, there are some issues here for the Assembly: six days before I have been called to give evidence to the coroner on these issues, in relation to a document that was released as a result of a request by counsel assisting the coroner, the opposition has grasped the counsel assisting's list of questions and is asking them in advance of counsel assisting the coroner doing so.

I am happy to discuss these issues in here, I am happy to respond to the question, but I just want to put on the record that I believe there is a real issue here in terms of the extent to which this parliament is potentially interfering with the administration of justice in asking me questions on a matter that they know will be put to me in the court next Monday. I just say these things for the record. Mr Speaker, members should reflect that I will be questioned on these matters on Monday in the Coroners Court, and I think that is the appropriate place for me to respond to these matters, in the face of a legal inquiry into every aspect of the fire.

To answer the question directly: at the briefing which the cabinet received on Thursday morning, a full range of issues was discussed. A range of theoretical possibilities and potentialities was mentioned. In the context of the briefing, the cabinet was left very generally—I cannot speak for my colleagues but I can speak for myself—with the view or impression that at that stage, that is on Thursday morning, the fires were contained, authorities were in control, there was a range of theoretical possibilities but that at that stage there was no cause for undue alarm. The Emergency Services Bureau was not recommending a change to the nature of the operations for fighting the fire. They were not recommending that there be specific warnings to the community. They were not alerting the cabinet to the need at that time, and in the consequence of the state of the fire at that stage, for any such action.

My attitude to the fighting of the fire—and I know it was the attitude of the minister—was that we had in the Emergency Services Bureau a team of experienced professionals on whom we relied. And we did. We backed their judgment, we backed their professionalism and we accepted their advice.

Bushfires—Nolan Gallery

MR CORNWELL: My question is to the minister for the arts, Mr Wood. You said on 2CC last week that you had received warnings from the Cultural Facilities Corporation that the Nolan Gallery was under threat in relation to the bushfires. Who rang you? From where had they got the information? At what time did you go to the Nolan Gallery to save the paintings?

MR WOOD: The director of the gallery rang me. I am not sure exactly of the time. I did not record it. It was mid-afternoon, I think. I think I said on 2CC that it was at about 2.30 pm. It could have been a bit earlier; it could well have been a bit later. That was the score. I was home at that time. It was the one day in a very long period that I was not at the Emergency Services Bureau and, because my home is fairly close to Lanyon, I went down there. I cannot recall exactly the message, the imminent threat. To the best of my memory, I was told that, as a precaution, they were taking the Nolan paintings out of the gallery and I decided that it would be appropriate for me to go down there.

MR CORNWELL: I have a supplementary question. Minister, when you resumed your role as minister for the arts to save the paintings, why didn't you do the same thing and resume your role as emergency services minister to warn people?

MR WOOD: I would not presume to say that in my role as minister for the arts I saved paintings. I was one person that was helping to take paintings out to a van and a couple finished up in my car. That is what happened. The circumstances behind my not being at ESB that day are probably known—on the Friday evening before Mr Stanhope became acting minister. I had long planned a holiday in Sydney, starting on the Saturday, and in faint hope that something might change Mr Stanhope took over as emergency services minister. Of course, I never went away. I did not go into the ESB. I certainly considered whether I should go into the ESB that day; but I thought that they would be busy enough and that they would be fully engaged, so I would not go in. I resumed my regular sessions at the ESB the next day.

Aged persons residential development—Belconnen golf course

MRS CROSS: My question is to the Chief Minister. Mr Stanhope, in the letter that you sent on 28 January this year to Mr David O'Keefe of Madison Lifestyle Communities Pty Ltd you stated that the government "will shortly be reviewing your proposal and I expect that the assessment will be finalised in the near future". This is in regard to Mr O'Keefe's proposal for an aged persons residential development at the Belconnen golf course. It would, however, appear that these comments are in direct contradiction to positions stated by a fellow minister and a fellow member of your government. Planning minister Mr Corbell stated in a letter dated 4 March 2003:

> While your proposal has considerable merit, in view of the broader planning issues, I cannot support it at this stage.

Further, Mr Corbell stated on *Stateline* on Friday, 27 February 2004 that the government was not going to support the development. Further, Mr Berry, in a letter to the community dated April 2001, stated that Labor would oppose any moves to add further

residential blocks on the Belconnen golf course, despite the fact that no development was proposed at the time. Chief Minister, what is the government's position on Mr O'Keefe's proposal for an aged persons residential development at the Belconnen golf course?

MR CORBELL: I am happy to answer Mrs Cross's question. Mr O'Keefe, as Mrs Cross outlined in her preamble, approached the government at some stage early last year with a proposal to develop part of the fairway of the Belconnen golf course for a range of housing, including some aged care accommodation. The government at that time, and I as the responsible minister, indicated to Mr O'Keefe very directly, and in a quite immediate way, that the government did not support the proposal, for the reasons that I outlined in the letter. I made reference to the commitment that you, Mr Speaker, gave, on behalf of the Labor Party at that time prior to the election, that we would not support development on that site. Mr O'Keefe subsequently wrote back to me, asking that I reconsider the matter—and he has done that on a number of occasions in the past 12 months. I have met with Mr O'Keefe on a number of occasions, and I am still not satisfied that the government is in a position to justify a change of direction from that which has been outlined to Mr O'Keefe in writing.

What the government has done has been to make sure that we have a range of sites available for aged care accommodation. Indeed, we have, for the first time in terms of any government action, made sure that we have a land bank of sites to make provision for aged care accommodation. There is a 100-bed site at Nicholls and a 100-bed site in Greenway. There is work happening on other sites in Gordon and Monash for independent living units. On top of that, the government is progressing the release of a site on the foreshores of Lake Ginninderra. Those are sites that, all-up, will accommodate at least 300, maybe 400, beds.

The government is building that land bank to make sure that we have land available, and we are progressing the planning in a very timely way to make sure that it is available for release as demand is there from future providers. The government is treating seriously the issue of land supply for aged care development, but it does not mean that we will automatically tick every proposal that comes along, especially when it is in contradiction of commitments given by the party—now the government—prior to the last election.

MRS CROSS: This is an interesting question time, Mr Speaker.

MR SPEAKER: Come to your question, please.

MRS CROSS: Chief Minister, given that I asked the question of you, I would like to ask you the supplementary: do you stand by the comments you made in the letter you sent to Mr David O'Keefe on 28 January:

> The government will shortly be reviewing your proposal and I expect that the assessment will be finalised in the near future.

If not, has the government formally said "no" to the Madison Lifestyle Communities proposal and, if so, when did the government formally advise Madison of this, Chief Minister?

MR CORBELL: The government, at the request of Mr O'Keefe, did reconsider his proposal late last year, and the government's position on the matter has not changed.

Mrs Cross: The Chief Minister's letter was in January—this year.

MR SPEAKER: Order, Mrs Cross!

MR CORBELL: The government has reconsidered the matter and the government's position has not changed.

Mrs Cross: And did the government write to Madison and tell them?

MR SPEAKER: Order, Mrs Cross!

Citizenship ceremonies

MR PRATT: Chief Minister, today the *Canberra Times* reported that you will receive a letter from the federal Minister for Citizenship and Multicultural Affairs that you are no longer deemed to be a fit person to preside over citizenship ceremonies. Quite correctly, federal Minister Hardgrave has determined that you have selfishly used such occasions to make partisan political comments. Mr Hardgrave has received complaints from recipients at such ceremonies and their family supporters that your emotional political speeches have been unsettling to them and, more importantly, detracted from the occasion. Why weren't you able to follow the well-established and bipartisan protocol used to conduct citizenship ceremonies all over Australia to celebrate new Australian citizens?

MR STANHOPE: I gave a speech on Australia Day at a citizenship ceremony and it was a very good speech. In that speech I opened with a discussion around the significance of celebrating Australia Day on 26 January for indigenous Australians. As we know, many indigenous Australians—I would think a majority of indigenous Australians—have a real concern that we celebrate as our national day the day on which European settlement commenced in Australia.

I discussed that and I acknowledged the pain of indigenous Australians, I acknowledged the pain that Aboriginal Australians feel at the fact that we as a nation celebrate as our national day the day on which they were dispossessed and, following their dispossession, the 200 years of disadvantage which continues today because of the unfinished road or business of reconciliation.

In the context of that, whilst admitting that for many other Australians 26 January was a day of great celebration, to celebrate this great nation of ours and to celebrate the values which we hold dear and which identify us as Australians, I acknowledged that for indigenous Australians there was an issue around the celebration of Australia Day on 26 January. I think that it would have been extremely discourteous to do other than that.

Mr Hardgrave thinks that that is being political. I think that it is being just as political on Australia Day at a citizenship ceremony to roll up to acknowledge and celebrate this day,

this celebration of our national day, and in the context of that celebration not to mention that for indigenous Australians it is a day that they view with real regret and pain.

Tell me that this is not, by omission, a political statement. It is, by omission, a powerful political statement that on Australia Day a person—a politician, a political leader—would not acknowledge that for indigenous Australians, the original settlers, Australia Day is regarded by many as invasion day, a day of enduring pain. Not to mention that—to ignore prior occupation of this nation, to celebrate just the last 200 years, to ignore the previous 60,000 years of occupation—seems to me to be a more powerful political statement than the acknowledgment of that pain.

The trouble with censorship, the trouble with the ban that has been slapped on me, the trouble with seeking to gag your political opponents is that we then have to engage in a definition of what is political. Is it political to mention the pain that Aboriginal people feel at the celebration of Australia Day on 26 January or is it political to refuse even to acknowledge that indigenous people occupied this nation for 60,000 years before Europeans arrived? I will tell you what I think was a blatant political statement. It was not the one I made. It was the ignoring of the pain, the suffering, the dispossession and the disadvantage that have arisen out of those 200 years of white settlement.

This path of censorship is a dangerous path, because one person's definition of "political" is never going to be the same as another person's definition of "political". Mr Hardgrave jumps up and says, "Oh, that's political. He mentioned the dirty word 'reconciliation'. He mentioned the dirty words 'apology' and 'sorry'. Therefore, he is being political. Therefore, let's ban him from the opportunity of participating in these ceremonies."

The speech then went into a discussion around those values which we adhere to as Australians and which we hold dear, values that identify us—egalitarianism, a commitment to a fair go, a commitment to the rule of law, respect for human rights—and, in the context of that, acknowledging that these are great and enduring Australian values, I went on to say how important it was that we protect those values. I went on to say that locking up children in detention camps does not protect them. Not complaining at the illegal detention of Australians in Cuba without charge, without access to a lawyer, is not respect for the rule of law. I think that it was appropriate to say those things.

MR SPEAKER: Order! The Chief Minister's time has expired.

MR PRATT: I have a supplementary question. Chief Minister, have you learnt that citizenship ceremonies are not supposed to be an ego trip for you, but a celebration of new citizens joining our community? Don't wreck the new citizens' day!

MR SPEAKER: A free kick for the Chief Minister.

MR STANHOPE: One thing I have noticed about many occasions on which I think it appropriate that we do address serious issues, such as what it means to be an Australian and what enduring Australian values are, is the extent to which many, particularly the Liberals in this place, simply refuse to engage and we get just dribbles and mindless pap. That is what we get; we have seen it exhibited here again today.

I will conclude by referring to the framework of the speech. The speech was framed around those enduring Australian values, the values that we hold dear, the values that I hold dear as an incredibly proud Australian, somebody that loves this place to death. Because I love it to the extent that I do, I am prepared to stand up for those values that are important, I am prepared to stand up for those values that I believe it appropriate that we protect, and that requires from time to time taking a stand on issues such as the illegal and the unjustified.

Isn't it interesting, Mr Speaker, to have the revelations of the last day or two about what Mr Howard did or did not know about weapons of mass destruction? Isn't it interesting that we now discover that the Prime Minister relied on dodgy intelligence advice or the absence of intelligence advice, the fact that the Prime Minister took us off to war, killed 35,000 people in the process, blood over Iraq in our name—

Mrs Dunne: I take a point of order, Mr Speaker. I refer you to standing order 118 (a), which provides that answers shall be concise and confined to the subject matter of the question, which was whether the Chief Minister has learnt that citizenship ceremonies are not to be ego trips. I do not think that it had anything to do with weapons of mass destruction.

MR SPEAKER: Mrs Dunne, the standing orders enable a minister to respond to a question for five minutes. Your side did ask the question and I think that the Chief Minister is entitled to refer to his speech and the contents of it.

MR STANHOPE: I think that, in that context, the issues I raised were relevant. We know that it is embarrassing to the Liberal Party. We know that it is embarrassing to the Liberal Party that they cannot achieve reconciliation, that they are not interested in it, that they will not acknowledge prior occupation, that their leader will not say sorry, that their leader is holding back reconciliation. We know that the Liberal Party are embarrassed at the fact that they lock up children in detention camps, behind razor wire in the middle of a desert. We know that it embarrasses them. We know that they do not want to talk about it. They should be embarrassed. They should be embarrassed at the fact that they have completely connived in the abrogation of the rule of law in the detention of Australians—

Mr Smyth: I take a point of order. Under standing order 118 (b) the minister is not entitled to debate the subject. He actually has to answer the question and the question was about whether he has learnt. It was not about the federal government. It was not about anybody else. It was about him. I am yet to hear him say whether he has learnt or not. Perhaps he should be confined to the subject matter of the question.

MR SPEAKER: I think that the Chief Minister is staying with the subject matter. The subject matter was his speech. You raised the question.

Mr Smyth: No, the supplementary question was about whether he had learnt something.

MR SPEAKER: You pointed a political question at the Chief Minister and I think that you have invited a political answer.

MR STANHOPE: I will conclude, Mr Speaker, by reflecting that I think that, as repeated in this place today, this is essentially nothing more than some incredibly shallow, puerile and petty political point scoring by Mr Hardgrave. It is shallow, it is petty, it is puerile and it is enormously to be regretted.

That is one level at which one might view this matter. But at another level there is a deeper and darker side to it: that the federal government would ban a head of government from attending and appearing at a citizenship ceremony on the basis of something he said that they did not like; that I should be banned, that I should be censored, that I should be excluded as a head of government, as Chief Minister of the ACT, from appearing at ceremonies to celebrate the citizenship of new Canberrans on the basis of something that I said that was incredibly embarrassing to the Liberals—the fact that they do not believe in reconciliation, the fact that they invaded Iraq without any guarantee, the fact that they have abrogated the rule of law and the fact that they have absolutely no commitment to human rights or these issues.

Child protection

MRS DUNNE: My question is to Mr Corbell. In your media statement of 13 February 2004 you stated that you were made aware on 3 October 2002 of problems in family services relating to the non-compliance with section 162 (2) of the Children and Young People Act. We have heard in this place that your colleague Ms Gallagher told the Chief Minister straightaway when she became aware of the breach. Why didn't you inform the Chief Minister when you became aware of the breach, and why didn't you inform your successor as minister when you handed over the portfolio to her?

MR CORBELL: I am not sure that, technically, you can ask me this question, as I am not the responsible minister. I am happy to answer it nevertheless. In answer to why I did not advise my successor as minister, Ms Gallagher, I should point out—Mrs Dunne should know—that it is the role of the department to brief the incoming minister on any matters of concern in relation to the operation of the department and any issues that are outstanding. I would have thought that, if there had been an ongoing issue of compliance with a statutory obligation, the department would have drawn it to the minister's attention. As far as I know, the department did not.

What I did when I was advised of the issue was raise it with my department, which was then education, and request that the department advise me of what steps were being taken to address this issue. Senior officers in the department comprehensively briefed me on the matter, and they assured me, both verbally and in writing, that comprehensive steps were being taken to ensure that the department complied with its statutory obligations under the act.

They advised me of new audit arrangements, new mechanisms to ensure compliance and improved training of staff. They indicated that these steps were being taken to ensure that the department met its statutory obligation under the act. This advice was further relayed in the discussion I had with the Community Advocate, when she met with me on the issue. Following those discussions, I had no reason to believe that those steps were not being taken. I certainly had no reason to believe that I needed to raise the matter with the incoming minister; that would not be the normal course of events in any case.

MRS DUNNE: So much for collegiality! Mr Speaker, I have a supplementary question. On 22 January this year the Chief Minister said that we as a government did not know about this breach of the act until December 2003. Why did you wait until 13 February to set the record straight that you in fact knew in October 2002?

MR CORBELL: I was not aware of the Chief Minister's comments. I think I was still on leave at that time.

Mrs Dunne: Don't you read the papers when you're on leave?

MR CORBELL: No, I don't. One of the pleasures of being on leave is that I do not read the paper or listen to the radio. That is what I do, Mr Speaker. I was formally on leave at that time, to the best of my knowledge, and I was not aware of the Chief Minister's statement until some time after I returned from my Christmas and New Year leave.

Tourism

MS MacDONALD: My question is to the Deputy Chief Minister, Mr Quinlan. I ask whether he could advise the Assembly of the recent launch of Canberra's new branding exercise.

MR QUINLAN: When you come up with a plan that Australian Capital Tourism has come up with, you do it with your heart in your mouth. I am sure that it is, first, a great joy for them that they have finished the job and put it out there and, secondly, a great relief that it has been done and that it appears to have been roundly accepted.

I hope and trust that all the tourism industry and Canberra get behind the program. The brand—See yourself in Canberra—can go anywhere. At this stage it has gone to some television commercials, which are not of course a campaign in themselves; nevertheless they are a method of getting the brand out there, getting people used to the idea and maybe inculcating in them something that can be used as a trigger in later campaigns.

In tourism and promotion it is important that we have a brand, and that we promote it and promote it positively. Canberra has to get over a negative image. It is part of the Australian idiom that we knock other places.

I launched a backpacker promotion several months ago. I spoke to some young German people backpacking through Canberra. They had been advised not to go to Canberra. They had been told by tourism operators in Sydney, "Don't spend too much time in Canberra; there's nothing there." A couple of them were political science students.

I am here only to advise the Assembly what we have done. We are asking for support in this. I am asking all of Canberra, including this Assembly, to get behind it, to take a positive attitude, to be part of the promotion of Canberra, and to breakdown some of the negative images that Canberra carries.

This is the flagship, the lead logo that will, over the next few weeks, take us on a wide promotional campaign as far as Perth. Please give it your support. I did not mention Feel the Power once, until then.

MS MacDONALD: I have a supplementary question. Can the Minister advise as to the success or otherwise of the first major promotion under the new branding.

MR QUINLAN: Yes I can. I was in Sydney this morning for a promotion in Martin Place. It was shown on morning television across New South Wales. It was also broadcast in part across FM radio—FM106 in Sydney. Part of the promotion received coverage on page 3 of the *Sydney Morning Herald*. It has certainly made a significant impact.

I walked up Martin Place and one of the first people I saw was someone who runs horse trekking holidays in the Snowies—one man called Peter Cochrane—a fellow you might know. He extended his hand and said, "Ted, this is the best promotion Canberra's ever done". And he has committed to put his support behind it.

It has been embraced, promoted well and received well. I trust that everybody takes a positive attitude. This sort of marketing is like home decorating: everybody becomes an expert at some time or another and opinions always vary. We put together a commercial. The first time I saw it, I thought it was pretty good. The impression that people are feeding back to me is that it is really good, but that maybe we should get rid of the guy with big eyes. It will be developed and used as a positive theme for Canberra.

Child protection

MRS BURKE: My question is to the Minister for Education, Youth and Family Services. Section 418 of the Children and Young People Act requires the minister to review the act after three years. The brief of October 2002 to the then minister Simon Corbell that noted the breach under section 162 (2) also noted that the review had started. You tabled the review in June 2003. Minister, nowhere in the review is there mention of section 162 (2) and the problems the department was having. Why did your review of the act fail to address this issue, given that it was well known as far back as October 2002?

MS GALLAGHER: The report I tabled in the Assembly was a work that had been done between the Department of Justice and Community Safety and the Department of Education, Youth and Family Services into meeting the deadline of, I think, May 2003 for a review of the act. Essentially, the review of the act is not finished. That was a status report of areas that would be investigated further. We have since gone to consultations with the community on the review of the act. They were conducted late last year. It has been delayed somewhat, particularly by the commissioner's investigations at the moment. I have had a couple of meetings with the commissioner where she has indicated that some of her findings may impact on the Children and Young People Act. So we have delayed putting together legislative change to that act pending the commissioner's final findings, which are due in April.

Of course, since this issue has emerged, after that report was tabled and the work that the departments of justice and community safety and education did, that area of 162 (2) is being examined. It is obviously still a relevant provision in the act, but how the protocols are met, which is work that is being done now by the department, will be looked at in terms of the review. But I do not anticipate any changes to section 162 (2) of the act. I imagine any legislative change will go around enhancing and protecting the children

rather than weakening any provisions. So 162 (2) will remain, but the review has not been completed. I guess that is the final answer to the question.

MRS BURKE: My supplementary question is: did Mr Corbell bring the failure of your department to follow section 162 (2) to the attention of the cabinet, or to your attention, when you were discussing the review of the act in May/June of last year?

MS GALLAGHER: No, he did not. It was not discussed. From my recollections of the cabinet discussion around the paper I took to cabinet, it was not part of it. But, as Mr Corbell has said, and as I am increasingly finding out as we trawl back through documents—many of which you have got, Mrs Burke—they indicate that at every point that this could have been raised with us it was not. In Mr Corbell's case, when he did note on the brief that he wanted explanations around the 162 (2) failure, we were both given assurances that the matter was under hand—not specifically me in relation to 162 (2)—

Mrs Burke: In hand or under hand?

MS GALLAGHER: In hand—and that they were being dealt with; that there was nothing of concern, certainly in Mr Corbell's case. It was brought to my attention much later, but I had been briefed on the refocus strategy where I had been given no indication that there were any issues that needed to be brought to my attention; rather, that everything was going very well in family services and between family services and the OCA, and that both the OCA and the director of family services were working together on any areas of concern that remained. So, again, the report that I tabled into the review of the act did not deal with 162 (2); it dealt with other areas of concern that had been raised through the departments and merely formed part of the process of the review of the act. The actual stakeholder consultations, which have been quite extensive, with submissions from a number of organisations that either have direct relationships with the Children and Young People Act or have dealings with children who may have orders under the Children and Young People Act, have all been finalised now and all of that input, plus the commissioner's findings, plus the work that was done by the department, will go into making that legislation a much better piece of work.

Therapy services

MS DUNDAS: My question is to the minister for disability, Mr Wood. Minister, I understand that there is a shortage of speech therapists and occupational therapists in the ACT, which is preventing Therapy ACT from delivering the planned number of hours of therapy services. What are you doing to address this staffing shortage, and when do you expect that any strategies that you have will yield results?

MR WOOD: There has been a shortage over a period, a shortage we have been working very hard to overcome. The shortages in the areas that you mention are common around Australia, and they are not the only areas, either. Other disciplines can point to shortages in their areas. We have continuously and extensively advertised for positions, in recent times with a little success. In the last three or four months we have taken on 10 to 11 additional staff in various areas of speech pathology, occupational therapy and social work. In physiotherapy it is very difficult; we have not been able to take on any extra staff in that area.

We have been talking to universities. As a help, the University of Canberra will shortly expand the range of courses that it provides. In respect of autism, specialist staff are coming down from New South Wales to help work on our waiting list, which is certainly too long. We are endeavouring, through a range of circumstances, to overcome the difficulties caused by the shortage of professional workers.

MS DUNDAS: Mr Speaker, I have a supplementary question. The 2003-04 budget had a target of 53,500 hours of therapy services to be delivered by June 2004. Do you believe you will be able to reach this target? If not, what other relief services are being offered to support children who need to access these therapy services?

MR WOOD: I cannot tell you offhand whether that target can be reached. Given that the positions funded are in access of the positions we have been able to fill, it may be difficult to do so. We continue to work with schools and with health services and, with the services we offer, are working diligently across all areas to overcome the problems that may emerge if people are not able to get the services that they need.

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

Executive contracts

Papers and statement by minister

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs): Pursuant to section 31A and 79 of the Public Sector Management Act 1994 I present the following contracts:

Short-term contracts:

Geoff Keogh, dated 12 February 2004
Andrew Rice, dated 30 January 2004
Yvonne Kachel, dated 29 January 2004
Susan Hall, dated 4 February 2004

Schedule D variations:

Joanne Howard, dated 4 February 2004
Michael Bateman, dated 2 February 2004
Aidan O'Leary, dated 4 February 2004
Garrick Calnan, dated 22 January 2004
Paul Lewis, dated 20 January 2004
Peter Kowald, dated 4 February 2004
Yvonne Kachel, dated 16 February 2004
Lynette Allan, dated 28 January 2004

I ask for leave to make a statement in relation to those contracts.

Leave granted.

MR STANHOPE: I present another set of executive contracts. These documents were 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. The contracts were previously tabled on 10 February 2004. Today I present four short-term contracts and eight contract variations. The details of those contracts will be circulated to all members.

Papers

Mr Quinlan presented the following papers:

> Financial Management Act, pursuant to section 26 (3)—Consolidated Financial Management Report for the financial quarter and year-to-date ending 31 December 2003.
>
> Australian Capital Tourism Corporation Act, pursuant to subsection 28 (3)—Australian Capital Tourism Corporation—quarterly report—October to December 2003.

Land Development Agency
Paper and statement by minister

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

> Planning and Land Act, pursuant to section 46—Business Plan—Land Development Agency—2003-2004, including a Statement of Intent 2003-04.

I seek leave to make a statement.

Leave granted.

MR CORBELL: The government's pre-election planning and land management policy for Canberra, "Planning for People", set initiatives and policies aimed at protecting Canberra's unique planning heritage and enhancing the quality of residential and urban amenity. As part of this policy the Stanhope government committed to land development as a key function of government. As such, on 1 July 2003, pursuant to the Planning and Land Act 2002, the formation of the Land Development Agency incorporated functions of the former land agency within urban services, Kingston Foreshore Development Authority and the Gungahlin Development Authority.

The government established the LDA, which will have three primary functions: land development, associated works and the enhancement of land surrounding that development, and the ability to carry out strategic or complex urban development projects. To meet these functions the LDA developed its first business plan, which I am tabling for the benefit of members today. Through its key objectives this plan gives a clear direction for the delivery of key projects and the government's land release program.

In 2003-04 the key projects of the LDA will include developing land in the government's 2003-04 land release program, both independently and through partnership with the private sector, and facilitating further commercial development in, and ongoing management of, Gungahlin Town Centre. The further development of the town centre will continue to contribute to the level of amenity of the Gungahlin community. Other key projects include completing the public sector land development pilot project at Yerrabi stage 2, and managing the development of the Kingston Foreshore area in accordance with government directions.

In 2003-04 over 338 residential units within the Kingston Foreshore development will have been sold, the servicing of many sites will have been completed, the construction of the eco-pond will be under way, the forward works package for the preparation of the construction of the harbour work will be completed and works surrounding common parklands and the sewer pumping station will be in a well-advanced state.

Key aspects of the 2003-04 land release program include improved housing affordability with the government ensuring a fair supply of land at an affordable price whilst protecting the territory's major land assets, and the government, through the LDA, has created an aged care land bank to meet the needs of the aging population. Currently, four studies are being undertaken in Gordon, Monash, Greenway and Nicholls. There are two sites where offers of leases will be made prior to the end of this financial year—the Little Company of Mary in Bruce, and Southern Cross Homes in Garran.

The Stanhope government has committed to the further development of Civic as the pre-eminent town centre. The government has committed to the Civic implementation strategy and to the revitalisation of Civic West. As such, the release of section 61 City has provided the government with an excellent return on its asset and improved employment prospects in Civic, and it will further strengthen Civic West. The LDA will also deliver a land release program that aims to provide for 3,394 dwelling sites into the marketplace for development consistent with the in globo release framework, including 1,000 dwellings from redevelopment through a variety of mechanisms.

Key items that members should note in the business plans are the LDA's plans to contribute more than $130 million to the government in 2003-04; facilitate the delivery of high-quality urban design outcomes; address ongoing issues relating to land availability and land supply by ensuring that the market is in equilibrium; facilitate the continuing development of town centres, in particular those of Civic and Gungahlin as vibrant mixed-use centres; and to serve the government's social objectives by identifying the provision of land for aged persons accommodation and adaptable and affordable housing. The LDA will help in our building for our ageing community strategy.

The LDA initiatives, in conducting government land development as well as partnerships with the private sector, will provide opportunities for individuals to purchase land so they can have their own builder and their own architect, if they so choose. That choice will allow for increased housing affordability and greater innovation in design. It has been quite a challenging task to bring together three disparate organisations with different people, cultures and histories. However, I am pleased with the effective and productive work that has been done in this regard. To have managed such a complex task

in such a short period and to still have maintained a focus on delivering the government's land release program I think is a significant achievement and one of which I am proud.

In this regard I acknowledge the significant efforts of the Land Development Agency board and staff of the agency, the chief executive and others in achieving this excellent outcome. The Land Development Agency, through its land development and land sales program, supports the government's vision of Canberra as a strong, confident, and prosperous community. This is just another election promise that has been delivered by the government. I commend to the Assembly the work of the LDA, the business plan and the statement of intent as agreed to by the Treasurer.

Papers

Out of order petition

Mr Wood presented the following paper:

> Petition which does not conform with the standing orders—Public Transport Needs in the ACT—Mr Stanhope (682 citizens).

Subordinate legislation

Mr Wood presented the following papers:

> **Subordinate Legislation (including explanatory statements unless otherwise stated)**
>
> Legislation Act, pursuant to section 64—
>
> Cemeteries and Crematoria Act—Cemeteries and Crematoria Appointment 2004 (No 1)—Disallowable Instrument DI2004-16 (LR, 9 February 2004)
>
> Cultural Facilities Corporation Act—
>
> > Cultural Facilities Corporation Appointment 2004 (No 1)—Disallowable Instrument DI2004-17 (LR, 12 February 2004)
> >
> > Cultural Facilities Corporation Appointment 2004 (No 2)—Disallowable Instrument DI2004-18 (LR, 12 February 2004)
>
> Electoral Act—Electoral Amendment Regulations 2004 (No 1)—Subordinate Law SL2004-6 (LR, 16 February 2004)
>
> Public Place Names Act—Public Place Names (Gungahlin) Determination (No 2)—Disallowable Instrument DI2004-19 (LR, 12 February 2004)
>
> Road Transport (General) Act—Road Transport (General) (Application of Road Transport Legislation) Declaration 2004 (No 2)—Disallowable Instrument DI2004-21 (LR, 16 February 2004)
>
> Utilities Act—Utilities Exemption 2004 (No 1)—Disallowable Instrument DI2004-20 (LR, 12 February 2004)

Answer to question on notice
Question No 1180

MR SMYTH: On 12 February I asked Mr Corbell about an overdue answer to question 1180, which was originally directed to the Chief Minister but which was redirected to the health minister. The time that was allocated to the minister to respond to my question expired on 10 January but I have not yet received an answer from the minister. Could he tell me where that answer is?

MR CORBELL: Did the member's question relate to bushfire counselling?

Mr Smyth: It did.

MR CORBELL: I provided an answer to the member's question today.

Mr Smyth: Thank you, Minister.

Crimes Amendment Bill 2004 (No 2)

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

Title read by Clerk.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (3.34): I move:

> That this bill be agreed to in principle.

I apologise as I missed the call this morning. I regret the inconvenience to members. Currently, our legislation makes no real distinction between people entitled to an acquittal on the grounds of mental impairment and people who may have been quite mentally healthy and functioning normally at the time the offence was allegedly committed, but who are found unfit to plead when required to stand trial. The bill that I introduce in the Assembly today will amend provisions in both the Crimes Act 1900 and the Mental Health Treatment and Care Act 1994 to rectify difficulties recently identified concerning issues relating to fitness to plead in criminal trials and the special hearing process established under that legislation.

To fully appreciate these amendments one must understand the system that currently applies when fitness to plead becomes an issue in the prosecution of a criminal charge. Presently, an issue relating to a person's fitness to plead to a charge is raised in either the Magistrates Court or the Supreme Court. Once raised, the proceedings are adjourned until the question is determined. Assessments of whether people are unfit to stand trial are made by the Mental Health Tribunal.

Pursuant to section 68 of the Mental Health Treatment and Care Act 1994, the tribunal is required to make a determination that a person is unfit to plead to a charge if satisfied that the person's mental processes are disordered or impaired to the extent that the person is unable to understand the nature of the charge; or to enter a plea to the charge

and to exercise the right to challenge jurors or the jury; or to understand that the proceedings are an inquiry as to whether the person committed the offence; or to follow the course of the proceedings or understand the substantial effect of any evidence that may be given in support of the prosecution; or to give instructions to his or her legal representative.

However, a person is not unfit to plead only because he or she is suffering from memory loss. A special hearing is held when a person is found by the tribunal to be unfit to plead and is unlikely to become fit within 12 months or when the tribunal finds that a person is unfit to plead but is likely to become fit within 12 months and the person then does not become fit within that time. Special hearings are generally conducted in the Supreme Court. They are, as nearly as possible, conducted as if they were an ordinary criminal proceeding. They are unique because the outcome of a special hearing will be either an acquittal or a non-acquittal.

A non-acquittal is not available in an ordinary trial where the verdicts available for a jury are guilty, not guilty and/or that they are unable to reach a verdict. An acquittal will result in the person's immediate release. A non-acquittal entitles the court to order that the person be detained and the person be referred to the jurisdiction of the tribunal. A non-acquittal does not constitute a basis in law for the recording of any conviction for the offence charged. Once a person is referred to the tribunal the court will have no control over the release of that person and no further involvement, although it will be required to set a limiting term—a term that equates to the penalty of imprisonment that would have been imposed had the matter proceeded as an ordinary criminal trial.

The current legislation provides that the mental health system assumes all responsibility for the person and the involvement of the criminal justice system ceases without ultimate determination of a charge and the availability of criminal sanctions that would flow upon conviction. Under present legislation a person could be charged with a serious offence, found unfit to plead at the time of the trial, subjected to a special hearing, subject to a non-acquittal, detained and referred to the tribunal.

The tribunal would be required to consider the discharge of this person every six months and could order the person's release after considering specified matters. After a short period of time the person may become well again and could be released back into the community. That person would not be able to be tried for the crime that he or she was originally charged with as a result of section 317 (4) (b) of the Crimes Act 1900, which acts as a bar to further prosecution. Further, the courts have no further involvement with the management of a person once they have been referred to the tribunal.

In cases involving acts of serious violence, for a person to be released after relatively short periods in custody and usually no prison would offend the community's sense of justice as well as being a source of legitimate complaint by victims. This bill introduces a system that will ensure that people who may have been quite mentally healthy and functioning normally at the time the offence was allegedly committed can be held criminally responsible for offences allegedly committed. Firstly, the person must have been charged with a serious offence, being an offence punishable by a maximum of five years imprisonment or more; secondly, the person must have been subject to a non-acquittal at a special hearing after having been found unfit to plead; and, finally, the

person must have had an order made by either of the courts pursuant to the relevant sections of the Crimes Act.

Once that has occurred the Mental Health Tribunal will be required to review the person's fitness to plead at least once every 12 months until the person is found fit to plead, or the Director of Public Prosecutions has notified the tribunal in writing that he does not intend to take further proceedings against the person in relation to the offence. In considering this matter the director would be required to apply his general prosecution guidelines, and matters such as the seriousness of the crime, strength of the prosecution case, wishes of the victims or victims' families, the length of time since its alleged commission and the time the accused person had spent in custody would all be relevant factors in the exercise of this discretion.

In my view this is a more appropriate balance between the public interest and that of the offender. Offenders will be liable to be held criminally responsible for crimes they committed whilst mentally healthy when and if they recover from the mental dysfunction or illness that has subsequently developed and prevented their trial. New South Wales, Tasmania and Western Australia allow for a person to be tried on indictment for the original crime if they become fit to plead at a subsequent time. The bill removes the bar to prosecution for serious offences only. To ensure that the principles relating to double jeopardy are not infringed, the bill provides that if a person who was not fit to plead is later convicted on indictment of the original charge any time spent in custody while unfit to plead would be taken into account when any penalty is ultimately imposed upon criminal conviction.

In the United Kingdom, Canada and New Zealand, a person detained following a finding of unfitness to plead may be tried when he or she becomes fit. It should be noted that all these jurisdictions also have human rights legislation. The amendments also provide for flexibility in the timing of the reviews and will require the tribunal to conduct a review regardless of whether the person is currently subject to a mental health order, or the type of that order.

Prior to 1994 a person found to be unfit to plead at the time of the trial would be held in strict custody until the pleasure of the Governor-General was known, regardless of the seriousness or otherwise of the offence and without the allegation against the person being tested at all. Section 317 of the Crimes Act sets out that the question for determination at a special hearing is whether the jury, or the judge in those hearings that are conducted by a judge alone, is satisfied beyond reasonable doubt that the accused committed the acts that constitute the offence charged. The ACT Supreme Court recently ruled that these words mean that the prosecution is required to prove all the essential elements of the offence, including the mental elements of the offence, though defences such as mental impairment or diminished responsibility could not be raised.

The court rejected the submission that the phrase "committed the acts which constituted the offence charged" referred only to the physical elements of the offence. It was not intended that all the elements of the offence, including the mental elements, would need to be established. If that were the case, the phrase "committed the offence" would have sufficed in section 317 of the Crimes Act. The bill amends provisions to clarify that on a special hearing the court is to decide whether the accused committed only the physical

elements of the offence charged. The prosecution is not required to prove the mental elements of the offence. The term "engage in conduct" is inserted. This term is derived from the existing definition of the criminal code and includes only the physical elements of the offence.

The adoption of this phrase also incorporates the inclusion of omissions to ensure that allegations to the commission of offences that rely upon omission as the elements of the offence, such as manslaughter and criminal neglect, that is, the failure to do something, can be dealt with in accordance with the provisions relating to the conduct of special hearings. This was the intended interpretation of the words and is consistent with the introduction of a safeguard to ensure that a person is not detained without some opportunity for some testing of the allegations, as was the case prior to 1994.

Currently, section 317 of the Crimes Act is silent as to whether verdicts that would be available as alternative verdicts in an ordinary trial are available in a special hearing in the Supreme Court. For example, the legislation does not specify that manslaughter is an alternative verdict in a special hearing only on a charge of murder. The bill proposes that this ambiguity be removed to clarify that alternative verdicts are available verdicts in special hearings conducted by the Supreme Court. Alternative verdicts are available in special hearings conducted in New South Wales, Victoria and Tasmania.

The bill also provides for a range of other minor and technical matters that improve the current system. As I have previously indicated, this bill addresses only those minor amendments identified as requiring urgent attention. There have been a number of criminal cases in the past 12 months that have highlighted some of the difficulties being experienced with the current system of interaction between the criminal justice and mental health systems. These issues are complex. I announced a review of this legislation late last year. That review is progressing well.

The bill strikes a more appropriate balance between the public interest and that of an offender. Offenders will be liable to be held criminally responsible for crimes they committed whilst mentally healthy when, and if, they recover from the mental dysfunction or illness that has subsequently developed and prevented their trial. It upholds the legal principles that underpin our legal system and expresses community expectations by providing greater clarity and removing ambiguity. I commend the bill to the Assembly.

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

Canberra hospital
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:

> The Canberra hospital.

MR SMYTH (Leader of the Opposition) (3.44): Canberra residents would be well aware of the existence of Canberra hospital—their major trauma centre, their major hospital and the place that they look to when they need assistance in an emergency or after hours

service. I believe that the staff at Canberra hospital—doctors, nurses, allied health professionals, administrative staff, social workers, cleaners, caterers, and anyone else—all do an outstanding job. However, we cannot escape the fact that the hospital is in crisis—a crisis caused by the shortsighted approach and mismanagement of that hospital by this government.

Yesterday we all awoke to an article on the front page of the *Canberra Times* entitled "Hospital system hits new low. ACT pays more for less: study." The first paragraph of that article reads:

> The ACT public hospital system has become the least cost-effective in the country as administration costs escalate by 51 per cent.

The article goes on to state:

> The ACT provides 265 treatments per $1 million spent compared with the national average of 331, and has overtaken the Northern Territory as the least cost-effective public hospital system, according to the latest Productivity Commission report into government services.

That is an appalling turn of events. Darwin hospital, a traditional wooden spooner, has been given the name "wooden spooner" for good reason. Everything in Darwin is more expensive. It has numerous logistical nightmares and it has to cope with a small population. Canberra is not located in the tropics, it is not isolated from other capitals by millions of square kilometres of desert, and it is not reliant on airfreight. Canberra has a highly urbanised population of 330,000, yet its hospital has a worse rating than a hospital that is hamstrung by those factors. Let us remove those factors and acknowledge that staff at Canberra hospital are doing their best. Where does the responsibility lie for the crisis in which that hospital now finds itself? It lies fairly and squarely at the feet of this Labor government—a government that is too driven by bitterness and warped idealism to loosen its control on Canberra hospital and that throws an ever-increasing amount of money at it as a simplistic solution.

What have we got for that extra money? Administration costs are up by 51 per cent. No wonder the waiting lists are out of control! Who can forget those heady days of just over two years ago when delegates to the health summit were told that the first action of the reformed department of health would be to create two new deputy chief executive officer positions—$1.5 million out the door over the life of those contracts? Has the creation of these two new uber executive positions not created handsome dividends? What about patient satisfaction? The Press Ganey report—a major report and not some sort of passing fancy, as the Minister would have us believe—puts Canberra hospital in the bottom 10 per cent of peer group hospitals or similar hospitals around the country.

At first one could be forgiven for thinking that that was not true and that only one area of the hospital brought down the overall score. Unfortunately, that is not the case. Canberra hospital scored badly across all areas of inpatient services. Even in its better performing areas, such as nursing care, it barely made it into the twentieth percentile. Opposition members are not making up those statistics; this is the result of a statistically valid tool, known as the preceptor, being run by the market leader in hospital satisfaction surveys around the world.

Press Ganey backs up the anecdotal evidence that we all hear. Just yesterday a constituent told me how his son had injured his hand at school. After presenting at Canberra hospital he was told that he would have to wait six hours. His parents arrived and took him home. After making a few phone calls they were able to have him seen quite quickly at John James hospital. More recently we have heard tales about patients being parked in corridors on trolleys. We have been told that Canberra hospital has been by-passed several times this year. I am not sure of the exact number of times and we are not able to establish those figures. The minister might be able to enlighten us.

The Nurses Federation claimed that ambulances were being used as beds at the hospital. The minister said that that was not true, but the CEO was much more coy when questioned about that possibility. It is not just the Productivity Commission telling us that there are problems: consumers, patients and staff are also telling us that there are problems. Recently the Australian Nurses Federation spoke about its concerns. In a less formal way, workers at the hospital vented their spleen on www.impactednurse.com, the website of nurses who have been affected. I read from an article in the "Month in Review" section, which appears to me to be a pretend news story. The article states:

> *Reuters, Monday*: "A major Australian emergency department has reduced its size to 4 beds in a brave new initiative to meet the increasing health needs of the community", a government spokesperson, Mr Soggybottom, announced today.
>
> "By synergistically converted our services and pro-actively retrograding their number of beds to 4…we aim to set a new gold standard in healthcare. A model that will be held up as proof positive of our commitment to caring for our community well into the new millennium, Mr Soggybottom said.

Of course, that is a joke; it is a complete fabrication. However, when we read the remainder of that article we find that it is a little more real than people would care to believe. The problem that is being experienced appears to involve access to the wards. The article, which addresses the bed block issue in New South Wales, states:

> Thirty to forty per cent of adults admitted to principal referral or major metropolitan hospitals experience unacceptable delays getting to destination wards. These delays are likely to be associated with poorer clinical outcomes and increased length of stay after the ED phase of care, and impair the ability of EDs to deliver high standard emergency care.

The press release that was issued yesterday by Mr Corbell states:

> Labor is focused on quality—quality outcomes for the people of Canberra.

Mr Corbell then states:

> Our health system should be judged by outcomes, not just how much it costs.

If we take into account that statement and what is happening in our hospital system we see clearly that Labor is not concerned with outcomes and it is not focused on quality care, as that is not what is being delivered. The unacceptable waiting times in the hospital emergency department is affecting patients and, therefore, outcomes. The stories

are legion. I know of two stories concerning Canberra hospital—our hospital. A young fellow with a broken leg waited for about three days for his leg to be fixed. Another young fellow who broke his ankle in the early hours of Sunday morning—he had a double fracture—spent almost a week on morphine before he could get surgery to correct it. That kid could not get his broken ankle fixed because there was no available theatre time and no doctor to do the surgery for him. We have a problem whether or not the minister cares to acknowledge it.

I have spoken often about the Labor government's use of part-time health ministers. Many of the problems that we are faced with today can be attributed to that part-time attitude. Mr Stanhope did little in health, except establish a pattern of spending more and getting less. After 12 months he then flicked the health portfolio to Mr Corbell. Members might remember this old joke: When premiers want to ruin any minister's career they give him or her the health portfolio. Mr Corbell, under his own steam, was well on his way towards ruining his career, but I would suggest that the health portfolio is abetting his downfall.

None of Labor's health ministers have had any passion for the job. Mr Stanhope launched a foolish, unnecessary, and bureaucratic restructure that limits the capacity of hospital managers to get on with the job of maximising performance for the public. Mr Corbell is in denial about the key results that emerged after he was forced by the Assembly to table the latest monthly and annual reports. His latest utterances about the Productivity Commission show that he is still in denial. His attempt at putting a spin on this latest crisis is scraping the bottom of the barrel. He does not seem to know why this is happening and he has little idea about how he might improve the situation. It is about time that the Minister stopped casting around for creative spin and concentrated some energy on the health portfolio, in particular, the ailing Canberra hospital.

The Minister's latest excuse, a two-part answer, was to blame the former government. Labor refers to sections 11A or 11B of the ACT health budget when it wants to get out of a problem. However, when we look at the numbers we realise that that is not true. Mr Corbell will say that the report of the Productivity Commission covers part of the last year in which the former government was in office, which is true. In the months of July, August, September and October, before the change of government, 3,595 people were awaiting surgery.

When Labor came to office it immediately injected $6 million into the hospital system in an attempt to fix the crisis. Over the next eight months that cash injection of $6 million took the average number of people on the waiting list to 3,678—an additional 83 patients in that period. The pattern of this government is to fix a problem by throwing money at it. However, it does not achieve any results. That demonstrates the management, direction and leadership of this government. When that line did not fly Mr Corbell said in his press release—a corker of a press release—that was issued late on Monday:

> ACT Liberals want to run our public hospitals on the cheap...

Our half-a-billion-dollar health system is not cheap, but a growing number of people are on the waiting list because under Labor they cannot get an operation and they cannot get surgery. Mr Corbell then states in his press release:

> Labor is focused on quality—quality outcomes for the people of Canberra.

The Press Ganey satisfaction survey states that the people of Canberra do not think they are getting the quality about which the Minister speaks. The press release then states:

> While efficiency is a priority, it is not at the cost of health outcomes...Our health system should be judged by outcomes, not just how much it costs.

Let us look at the outcomes and at Labor's average from October 2001 until now. Mr Corbell seems to be under the impression that there is more throughput than is reflected on those lists and that the numbers on the lists are increasing as more people are joining them. Again, that is not true. From October 2001 until now, under Labor, 642 patients per month had access to surgery. If Labor is running the health system better and if it is getting more quality as a result of having put more money into the system, we would expect the waiting list figure to be much better than it was under the Liberals.

From January 2000 until September 2001 under the previous Liberal government 701 patients per month had access to surgery—almost 60 more than there are now under the better-managed health system which has had an additional $6 million injected into it. This minister is not giving the health system the attention that it deserves. What did Mr Corbell do in his first year in office? It is not the minister's fault that he was health minister for only a year and a bit, but let us look at the figures for the first 12 months that Mr Corbell was health minister. I remind members about what Mr Corbell said on 23 March 2003:

> I am concerned about waiting times for less urgent elective surgery—category two and three.

Mr Corbell expressed concern about the waiting lists—something about which you, Mr Speaker, would be aware. In December 2002, when Mr Corbell first became Minister for Health, the waiting list was 3,854—a legacy from Mr Stanhope. Twelve months later—happy anniversary and well done, Mr Corbell—an amazing 4,264 people are on the waiting lists. So the number of people on those waiting lists has increased. The number one priority of the minister was to address the waiting list and less urgent elective surgery problems.

In that time the number of patients who were overdue for surgery grew by 8 per cent. The number of people on the waiting lists increased by 10 per cent and the number of people overdue for surgery increased by 8 per cent under a minister who said he was committed to resolving the waiting list problem. When we recently received the waiting list figures for January 2004 we found that we had reached a four-year high. The number of people on the waiting list breaks the 4,500 mark—at 4,509. The number of patients who are overdue for surgery is going through the roof. We have received reports from several surgeons in orthopaedics that their quota of hip and knee replacements has already been done—and this at a time when more costly surgery is not being done and less costly surgery is being done.

Surgery is all-important to anyone who is waiting for it. At Calvary, 58 per cent of category 2 patients were overdue for surgery at the end of January. Sixty-four per cent of those patients required orthopaedic surgery and all operations involved plastic surgery.

The figure is not much better for Canberra hospital. At Canberra hospital a total of 69 per cent of category 2 patients were overdue for surgery. Members should remember that Minister Corbell is concerned about waiting times for less urgent elective surgery—category 2 and category 3. So a total of 69 per cent of category 2 general surgery patients were overdue for surgery. The hospital system is in crisis—a crisis of Labor's making.

MR CORBELL (Minister for Health and Minister for Planning) (3.59): I thank Mr Smyth for giving me an opportunity to talk about Canberra hospital. Canberra hospital is an excellent health care facility that provides a large number of essential health services to the people of Canberra and surrounding areas. In 2002-03, the last full financial year, Canberra hospital provided quality health care for more than 50,000 people. It is one of Canberra's largest employers, providing work for over 3,000 Canberrans and people from the surrounding region.

Canberra hospital is also a major learning centre providing young doctors, nurses, and allied health workers with the necessary training they need to become the clinicians of the future. Canberra hospital is a major public service of which we can be proud. Canberra hospital is more expensive per patient than the costs for the national average. However, that should come as no surprise to anyone, in particular, a minister from a former ACT government. After all, Canberra hospital is the major teaching hospital for the ACT and the southeast region of New South Wales.

ACT governments have made a commitment to ensure a higher level of self-sufficiency in hospital services provided for our community. We, as a community, have to accept that we must shoulder additional costs to ensure that we have access to high-quality hospital care locally—care that meets most of our needs. The alternative would be a much lower grade hospital service with larger numbers of Canberrans forced to travel interstate for medical care. The status of Canberra hospital as a major teaching hospital will be enhanced over the next three years as the territory continues a solid relationship with the ANU by providing teaching facilities for a medical school on this site.

The notion of the establishment of a medical school has been supported and driven by this government. We have allocated funding to make it happen. The development of and the design in the early stages of facilities to support the establishment of a school were commenced in November 2003. It is expected that construction will commence on that site in the third quarter of 2004 and the school is expected to be operational in late 2005. This initiative, which will increase the status of Canberra as a major learning centre for the nation, is a major investment by the Stanhope government in the development of our primary hospital service.

It is worth noting that the Canberra Liberals failed to provide funding for the medical school in their forward estimates. What sort of commitment does that highlight? The Liberals approach to health care is to make an announcement without allocating funding to make it happen. On a per capita basis, the cost of this facility will be greater than it would be in Sydney or Melbourne. However, in our view, the benefits to the people of the ACT and the region outweigh the cost. Clearly, that is not a view that is shared by Mr Smyth. Perhaps he would like to suggest which of these services he would dump in an attempt to help reduce costs.

He might suggest that we close the special care nursery. He might think that cardiothoracic services should be delivered only from Sydney. Perhaps he believes that all neurosurgery should be done interstate, or that we should tell the Commonwealth that we do not really want to pay for the medical centre. This government will do none of those things as it is committed to ensuring that Canberra hospital is a strong tertiary facility in the future.

Mr Smyth's constant harping was not about effective opposition; he was simply making a political point. The people in our hospitals, and the large number of Canberrans who depend on them, know how hard our hospital staff work and how effective and efficient they are in providing quality health services. People in the ACT sometimes get a jaundiced view of the effectiveness of our health services because of Mr Smyth's jaundiced point of view.

I will place on the record statistics relating to Canberra hospital. To the end of January 2004 Canberra hospital treated 30,524 inpatients, which is an increase of 1,100 on the figure to January 2003. It managed an additional 410 emergency department presentations compared to the same period last year. It provided 6,000 more outpatient occasions of service over the period to 31 January 2003. Even in areas where there is continuing concern and staff shortages, such as radiation oncology, there is cause for optimism. Recent initiatives by the government to increase the number of radiation therapists are working. We are increasing the number of people accessing services in the ACT.

In the 2002-03 budget the government provided $330,000 to establish additional radiation therapists and radiation oncologists in the radiation oncology department at the Canberra hospital. The government's initiatives are working. It is spending the money and it is achieving the results. Current staffing of radiation therapists is now 18 full-time equivalents against an establishment of 21.5 full-time equivalents. That is an increase of three therapists since November 2002. Three of the four radiation oncologist positions are currently filled. Over recent months the average waiting times for access to services has shown continued improvement.

Mr Smyth likes to allude to staffing costs as an administrative cost for our hospital. I would like him, as shadow minister for health, to visit Canberra hospital and to tell the nursing staff, medical staff and allied health staff that their salary payments are just an administrative cost that should be kept down. That is what he said in a press statement that he released today. I would like him to visit the radiation oncology department and to tell staff members in that department how the $2.75 million that was spent on state-of-the-art cancer treatment is an administrative cost that should not be taken into account when we are looking at improving service delivery at our hospital. That is what the shadow minister for health said.

This Government allocated money to improve equipment in the oncology department at Canberra hospital. As I just said, $2.75 million was allocated for new CT simulators, radiation therapy planning software and multi-leaf collimators, which replaced equipment that was over a decade old—something that the previous government failed to do. If Mr Smyth thinks that spending money on state-of-the-art cancer treatment is an administrative cost he should have the honesty to say so in public. Further work is under

way in this area to consolidate recent improvements so we can continue to further minimise the need for people to travel interstate to receive lifesaving treatment.

Mr Smyth claimed that costs in Canberra hospital were out of control and that administrative costs were escalating. Aside from costs or the requirement to pay nursing and medical staff what they deserve, that increase is as a result of insurance and Comcare premiums as well as agency nursing, allied health and other staffing expenses. This government is paying people to do the job and to provide the services. Mr Smyth, who seems to think that those salaries are an administrative cost, is conning the Canberra community.

When this government came into office it injected an additional $8.7 million into the health system. The majority of those funds have been spent very effectively. Funds were allocated to increase the number of nurses, to buy urgently needed equipment, and to meet insurance costs. All those costs were unavoidable but necessary. They need to be incurred if we are to have a properly managed hospital system.

The previous government, which chose to ignore spending money on these essential items, put at risk the capacity of the health system to meet community needs and expectations. Since coming into office this government has acted to bolster the territory's public health infrastructure. Additional funding has been provided to Canberra hospital to provide services that, on their own, might not increase throughput but will add considerably to the quality of our services.

Mr Smyth thinks that we should not have increased the number of hospital registrars but that we should have asked our young doctors to work unreasonably long hours. That is where some of the money has gone. Mr Smyth might believe that the additional money that we are spending to ensure that hospital patients have access to the most effective pharmaceuticals should have been spent elsewhere to make average costs look better. Is that what Mr Smyth is saying? He might believe that we should not be replacing old surgical equipment and that surgeons should be required to stitch the old stuff together.

Those are the sorts of absurd assertions that Mr Smyth is making when he claims that administrative costs are blowing out. This government is providing much-needed surgical equipment, pharmaceuticals and drugs to help people get better and to manage their pain and their illnesses. This government is providing more registrars to deliver the work that is needed in our public health system.

The former government starved the health system of much-needed staff and resources. This government is systemically going about fixing the problems that were left by the former government. The former government did nothing about those problems. All that opposition members are doing now is complaining about the health system when the former government ran down the service. People in the ACT know which members of this Assembly are committed to an effective and efficient public hospital service. They know that Mr Smyth is not one of them.

Mr Smyth failed to recognise that ACT Health was established as a single entity. Since the disaster—and it can only be described as such—of the purchaser-provider system for the provision of hospital services, we have established a single entity for the provision and management of public health services in the ACT. This process, which is evolving,

will take more turns in the short to medium term. However, the basis of this major reform is a more integrated and effective health system.

After today's debate the issue of most concern to me is not the discussion about the government's policies and actions in relation to Canberra hospital, as I know they will withstand any detailed scrutiny; I am concerned about the opposition's increasing tendency to accuse ACT health professionals of inefficiency and laziness. Mr Smyth should reassess his strategy. His main contribution to the health care debate was to constantly run down the efforts of our public hospitals to deliver the health services that are needed by the community.

His agenda is to constantly run down the efforts of health professionals and administrators in our health system who are working assiduously to ensure that Canberrans get the services they need when they need them. On behalf of those who are working to make the ACT health system a better and more efficient place, I say to Mr Smyth: Stop and think again about what you are doing.

MRS DUNNE (4.11): I wish to speak in debate today on this matter of public importance relating to Canberra hospital. We are not debating the clinical school, the unified system or the purchaser-provider system; we are debating the Canberra hospital. When the Stanhope government came into office it injected an additional $6 million of taxpayers' funds into the public hospital system. The question that opposition members have been asking is: What additional outcomes have Canberrans seen as a result of that additional expenditure?

As Mr Smyth and other opposition members have demonstrated, we have not seen a lot. The latest report of the Productivity Commission shows what a parlous state the health system is in. The Productivity Commission is not referring in its report just to administrative costs; it is referring to the cost-effectiveness of the system as a whole. The Productivity Commission, which is attempting to compare apples with apples, is measuring cost-effectiveness by calculating the number of people who go out the door for every million dollars that is spent in the hospital—separations per $1 million. The Productivity Commission said in its report that Canberra hospital's performance fell by 12.8 per cent over the period 2000-01 and 2001-02. I quote from the report, which states:

> While national cost-effectiveness in providing public hospital in-patient services declined by 7.7 per cent…

So everyone is doing worse. It is just that the ACT is doing conspicuously worse. Between 2000-01 and 2001-02 cost-effectiveness declined by 12.8 per cent. Using the same measure across all hospital systems—separations per $1 million—Canberra was established as having the least cost-effective hospital system in Australia, overtaking the Northern Territory. Members would be aware of the difficulties that are being experienced in the Northern Territory.

The Northern Territory has a much larger indigenous population, much higher impacts on it public health budget, tropical diseases, the tyranny of distance and the difficulty of getting people to hospital, whereas everyone in the ACT lives within 20 minutes of the hospital. People in the ACT do not contract tropical diseases on a regular basis. The performance of hospitals in the ACT is much worse than the performance of hospitals in

the most isolated part of the country. Let me demonstrate just how bad the performance of hospitals is in the ACT. The ACT provided only 265 hospital treatments per $1 million expended, compared to the national average of 331 hospital treatments.

Mr Corbell said earlier that this government is doing a number of things, such as replacing equipment and paying its doctors and nurses. Is he suggesting that the ACT government is doing all those things but that every other hospital system in the country is not? Is every other hospital not replacing equipment, doctors and nurses or looking for additional registrars? This Productivity Commission report compares apples with apples. When we compare apples with apples, the ACT comes out looking pretty pathetic. When everyone else is shown as being in decline, the ACT is shown as being in bigger decline.

I have long held the view—a view that I have expressed before in this place—that the Stanhope government cannot run a bath, let alone govern a city. That statement is given weight when we look at the way in which this government runs the ACT hospital system. What concerns me greatly about current issues regarding hospital services and outcomes is the attitude of the minister. Yesterday the minister made a desperate attempt to gain relevance in this debate by issuing a press release in which he said:

> ACT Liberals want to run our public hospitals on the cheap...

Whenever there is some doubt about any issue in the ACT this government blames the former government. Earlier, I misled members when I referred to section 11A in the budget estimates. I should have referred to section 11B, which refers to the blame game and states:

> Nothing works better than pointing out that an area of concern or attack is the fault or the responsibility of another. That is particularly so when a previous ACT government is responsible or did not address the problem while in office. If possible, always mention B, neglect of the ACT.

This Government has been in office for 27 months. It is time that it stood on its feet and said, "It is our fault." The minister can no longer say, "Do not blame me. I am just a little kid who is new at this." The minister is not a little kid, and he is not new at this. He is the Minister for Health. He has held that portfolio for the past 12 months or so and he has presided over a catastrophe. In an attempt to cover his confusion, he issued a press release entitled, "Liberals want to run Public Hospitals on the cheap", which states:

> I cannot believe that the Liberals are criticising the Government for spending more money on health...
>
> Labor is focused on quality—quality outcomes for the people of Canberra.

Let me put the record straight. The former Liberal government never ran—and it never will run—the hospital system on the cheap. The difference is that when we spend more money in the hospital system we ensure better outcomes for people. If Labor and Simon Corbell are concentrating on quality outcomes, why are the people of Canberra not getting more money for their extra dollars? I will refer to a couple of cases that have come to my attention. Last year, midway through the basketball season, the daughter of a friend of mine seriously ruptured her knee while playing netball.

After spending an entire weekend at the accident and emergency department, and after being told what was needed to be done to repair the ruptured crucial ligament and all those sorts of things, the clear message was that every day surgery was delayed it would jeopardise the chances of a full recovery. That incident occurred in September and she was given an appointment on 2 November. She was told that every day surgery was delayed it would jeopardise the chances of a full recovery, but she had to wait 2½ months before she even got an appointment.

This girl's family did what most families do—they took their chequebook and their private health insurance and they went to see somebody else, in this case in Sydney. She had the operation done that week because that was what the medical people said was needed. Mr Smyth referred earlier to people with broken legs who were on emergency surgery waiting lists for a week or two or three days. On one of those occasions, because there were no beds in the orthopaedic ward the patient, who was six feet tall, was put into a bed in a medical ward that had been made for someone who was five feet six inches tall.

This patient, who had broken legs and who was on morphine, had one foot hanging over the end of the bed. He was not very impressed at having to wait three days—on morphine and with his foot sticking out the end of the bed—for his leg to be fixed up when he was on the emergency list. The patient was not on the category 1 list; he was on the list that comes before the category 1 list that requires immediate treatment.

Mr Smyth referred also to a headline in the *Canberra Times* earlier this week that indicated taxpayers were paying more for their health services but were getting less in return. That is definitely the case. The elective waiting list has blown out and there has been a demonstrable failure in the emergency surgery area. The 2002-03 report of ACT Health clearly shows that emergency treatment times are declining. Page 25 of the report states that, compared to 2001, category 2 patients not seen in the required 10 minutes increased from 1 per cent to 9 per cent—a 900 per cent or ninefold increase.

Category 3 patients not seen in the required 10 minutes increased from 3 to 23 per cent, a sevenfold increase, and category 4 patients not seen in the required hour increased from 28 to 45 per cent, which is almost double the figure. Elsewhere in the annual report we find that the paramount target of 100 per cent of category 1 emergency patients being seen immediately is no longer being met. One of the issues on which the former Liberal government hung its hat was the fact that emergency patients were seen immediately, 100 per cent of the time.

I justify that statement by saying that we are still meeting the national average. The former government was exceeding the national average, but under this health minister and his predecessor we went down the gurgler. We are not getting better quality services as a result of spending more money. The government is frittering away that money on the wrong sorts of things. Money is being frittered away on people who are called bed blockers.

MR SPEAKER: The member's time has expired.

MRS BURKE (4.21): I want to pick up on a couple of points that my colleagues have put across. I have listened to Mr Corbell's comments too and I want to ask: why are we paying so much for so little? It seems a statement of the bleeding obvious, but why are we lagging behind in the ACT so badly? We have a government that purports to be managing things well and says that everything is hunky-dory, yet the evidence speaks for itself in the latest cost-effectiveness results for public hospital inpatient services.

Could it be that we have a minister who is not really committed to our public hospitals? Is that the problem? Is it that we have a minister who is not committed to ensuring that our hospitals run better with him at the helm? He likes to jibe and punch at the shadow health minister. He should take a look in the mirror. I do not think his performance is a shining example of how to run a public hospital system. When we have people crying out for good leadership, we have a minister that really is not demonstrating that at all, and as a result people are floundering. This minister chooses to continually blame the shadow minister for health, which is a bit feeble.

Could it be that we have a minister who thinks that by merely throwing money at a problem it will make it all better? Both Mr Corbell and Mrs Dunne have said that the Liberals spent money. We did, but we spent well. We also ensured that hospitals were given the resources to do the job that they needed to do to provide a better quality and level of service—more bang for the buck. What is becoming an all too familiar picture with this government is that they do not want to give value for money. They cannot give value for money; they are not on top of the job. I like to call it—I think quite appropriately—a bandaid approach. They seem to have no commitment to get to the bottom of the real issues. Health is just one aspect, which I will stick to now, but it seems to be a template for all other portfolios; perhaps I can talk about them another day.

Why is the minister not finding out why we have a hospital in the ACT that became the least cost-effective public hospital system in Australia? The minister should stop deflecting his responsibility by blaming the opposition. He can see for himself the figures; they are quite clear. It may be worth going through some of those now for the public record. The report states that, while national cost effectiveness in providing public hospital inpatient services declined by 7.7 per cent between 2000-01 and 2001-02, ACT cost effectiveness declined by a whopping 12.8 per cent. What is going on?

It is not good enough for the minister to blame others. It is not good enough for the minister to stand there, arrogantly and unashamedly, making it appear that the opposition are putting the blame on and pointing the finger at workers on the ground. That is an all too common cry from the government and it is a pathetic excuse for poor leadership. The report states:

> The ACT became the least cost-effective public hospital system in Australia in 2001-02—

This is staggering! I know Mrs Dunne is as appalled as I am at this—

> 'overtaking' the Northern Territory which, due to extraordinary costs, had achieved the lowest result in all previous surveys.

> The ACT provided only 265 hospital treatments per $1 million of expenditure, compared to the national average of 331 treatments.

The minister talks about levels of expectation; so what is he doing? He is blaming people who are sick because they want a better service. Shame! The report continues:

> The most notable component in the declining cost-effectiveness of the ACT system was a 51.1% increase in administration costs…

The minister has used all sorts of deflecting tactics, talking about machinery that was bought and saying that the government have spent money on this and done that. But the Leader of the Opposition and shadow minister for health has talked about administration costs. What is the minister doing to ensure that the administration costs are being brought down? He has not told us; he has not said anything about that. But he told us a lot about what he was buying. Obviously, with a 51.1 per cent increase in admin costs, something needs to be done. It does not take blind Freddy to see that, does it? Let us look at what the report says about comparability:

> Criteria for measuring hospital results are highly uniform across jurisdictions—

So there is nothing out of the ordinary here; it is comparing apples with apples. It continues:

> allowing the Reports to give quite comprehensive comparisons.
>
> The Productivity Commission data is expressed in terms of unit costs per 'cost-weighted separation' (or "cws"). To explain these terms, a 'separation' is a completed treatment, while 'cost-weighting' allows diverse treatments to be compared. Hence, the number of cws achieved by a hospital and the cost of achieving them is directly comparable between all Australian public hospitals.

So there is nothing unusual or out of the ordinary here. It continues:

> Cost-effectiveness of hospitals can be derived by reversing the costs/cws ratio to give (for example) the number of cost-weighted-separations per $million spent.

Under the item "National average" it states:

> The national average cost of a public hospital inpatient service was 2,801 per cws in 2000-01. This national average rose to 3,017 in 2001-2—an increase of 7.7%.
>
> Conversely, this means that $1 million of expenditure provided 357 hospital treatments in 2000-01, but only 331 treatments in 2001-2.

There are many, many figures here. Let us have a look further down the report at item 6, "ACT vs national cost components":

> Compared to the national results for 2001-02, the ACT recorded the following results:

I will just pick out a few here—

- Visiting specialist doctor costs at $261 per treatment were 128.9% higher than the national average (the highest in Australia);

- Administration costs at $281 per treatment were 65.3% higher than the national average (the highest in Australia);

- Administrative labour costs at $259 per treatment were 16.1% higher than the national average (the highest in Australia);

And so it goes on. People can read the facts for themselves. This problem is happening now.

We can clearly see the tactics of this government—lazy. I have several comments and quotes from the Chief Minister, from Mr Wood, from Ms Gallagher and from their colleague in Queensland Mr Beattie that all use the same tactics, which are very clever. They say how appalling and how terrible things are et cetera, et cetera and ask how the opposition can blame our workers, our public servants, our people on the ground. They then say that they have done X to fix—or bandaid—the problem. And the fourth point that they clearly use is, "The former government must take responsibility."

Mr Speaker, I put it to you: how can this government, who were in opposition for six years touting that they were going to be the best government of all time, now, 27 months down the track, stand up and say, "We still have not got it right, but we're working on it, people; we will have another review." It is not good enough.

MR SPEAKER: It is not open to me to give an answer to that question. I would like to.

MRS BURKE: Come on, Mr Speaker, please. So we do see that the problems in our public hospitals are happening now—and it is on this government's watch. It is no good for the government to continue to carp and harp on by blaming governments of the past. Take some leadership, or show some leadership. Take some responsibility. Fess up to it, take it on the chin and fix the problem.

MR STEFANIAK (4.31): Mr Smyth spoke earlier about a bed block in the Canberra hospital and about the nurses website. Let me continue.

> This blockage results in the patients 'bedspace' effectively becoming an inpatient space that is unable to be utilized for the assessment and management of new patients presenting to the ED. It is no longer a functioning unit of the emergency department but rather it is a ward bed in the emergency department.
>
> These patients (aka people) however, are often acutely ill, requiring considerable nursing resources to manage their needs.
>
> So, as access block multiplies during the day, the ED transmogrifies. The functional emergency department shrinks to be replaced by a growing acute care ward.
>
> We recently had a situation where there were so many people 'parked' in the ED awaiting bed allocation on the wards that we only had a few beds available to treat

> emergency department patients. And to keep some sort of functionality we had to utilize our 3 resuscitation beds, normally reserved for major trauma, cardiac arrests and the like.
> This adversely affects our preparedness to manage patients with critical life threatening conditions. With our ability to treat patients reduced to a trickle the waiting room quickly fills with the sick and injured. 25 to 30 patients, all waiting up to 6 hrs to be seen is not unusual. And many of these people will become unfortunate participants in the next days access block.
>
> We are also beginning to see the emergence of a new farcical situation, where at times there may be a full waiting room, whilst inside doctors sit around frustrated, waiting for an empty bed to become available to treat them. In order to best utilize this wasted time doctors will now come out to the Triage desk looking for low acuity patients (sprains, cuts, the flu etc) that can be treated on chairs or in the corridors. This results in a sort of reverse triage scenario, where the lesser ill are treated before the needier. The department devolves into dysfunction, completely unable to meet the needs of the community that it serves.

That is a very telling statement from a nurse. It was only last week that I heard that there was a bank-up of ambulances—about six or seven ambulances—outside Canberra hospital and people were being treated in those ambulances because there was no space inside for them to be treated. For the last year or so, I have heard continual complaints from nurses—very experienced nurses; nurses who in some instances I have known for some time, who have kept me apprised of problems in our health system, regardless of who was in government—who are becoming increasingly more frustrated. I have heard of nurses who have been there for 30 years and who have done a shift and then had to be called back in when they were very tired and would rather not do that because it affects their efficiency. Being the dedicated professionals that they are, they worried about not operating at optimum efficiency with regard to patients. I have been told that it is quite a common occurrence now that experienced nurses are doing more than just their allocated shift. There is a huge problem there in terms of shortages. One nurse I spoke to, who has been in the system for over 30 years and who from time to time has called me and complained about problems in the system, said, about a month ago, "In my 35-odd years of nursing in Canberra, I have never seen it so bad." Why is this so?

We have seen the figures that have come out recently showing that we spend more money and get less service than anywhere else in the country. We are a small system and maybe we do not have the economies of scale that larger systems do. But for us to spend more than the Northern Territory per head of population and not get the service that is needed is really something that this territory cannot be proud of and this government cannot be proud of.

Probably every year since I have been in this place, I have seen increases in the health budget. In recent times, under this minister, there have been significant increases in the health budget. Yes, that is the nature of health; but where on earth is the money going to? Why do we have this crisis? What is going wrong? What is the government doing? I accept that there are some things that probably are somewhat beyond its control; but when you get experienced nurses saying, "I have never seen it this bad," quite clearly there are things the government can do that it is not doing.

There are little things that could be done. I read out a scenario in the casualty ward. It is interesting to look at some of the figures there. There is mention of about 25 to 30

patients all waiting up to six hours. I have had cause to go to casualty myself and, being a football coach, I have taken players there. You expect to wait around, especially on a Saturday afternoon; you expect to wait around a fair time. Waits of two to three hours some years ago were not uncommon. I can remember taking an injured player from Tuggeranong to Canberra hospital in 1999. There was not a particularly heavy waiting list that day and after about two hours he was seen. More recently, in 2002, I went back and did some coaching in fifth grade and one of the players went to hospital at about 2.30 or 3 and did not get out until about 8. Again, there were about 20 people in casualty that day.

More recently, last year, my inside centre had a broken finger or something like that and went to hospital. He waited, waited and waited, and then joined the rest of us at about 9 o'clock, having been there for six hours. So it does not surprise me when I read a document here saying that six hours is now a fairly common time for people to wait, when in the past two or three hours was common. I remember injuries in 1992 when it was about a two- to three-hour wait in casualty, and it was similar in 1999. But in more recent times my experience of six hours is backed up by this document. That clearly points to something going awfully wrong—and not just going wrong over a lengthy period of time but something going awfully wrong in a fairly short period of time. And really one has to ask: what is this government doing? What is this minister doing? Where is this money being spent? Why are we seeing ambulances having to deal with people outside the hospital rather than their being dealt with inside the hospital? Why are experienced nurses complaining that they have not seen it so bad in their lifetime of work there? And why are we having the problems that I read out from this document given to me by Mr Smyth in relation to the bed block at Canberra hospital and the nurses website?

These questions do need to be answered. This motion by Mr Smyth is a very timely one. Health has always been basically a No 1 issue for Canberrans. It is always up there with education, usually in front of education. It is of crucial importance. It is a horribly worrying situation too, considering the ageing of our population and the fact that as they age human beings do require more medical assistance; they often spend more time in hospital. It is a situation that is not going to improve unless something is done, because our population is ageing at a fairly rapid rate and we are going to have twice as many people over the age of 65 in about 20 years time. This government needs to take some action now. It does not need more reviews. It cannot afford just to tread water. Urgent action is needed; otherwise, this situation, which has in many areas got considerably worse in recent times, is only going to get worse still.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (4.40): I am more than pleased to speak to this matter of public importance and to acknowledge the significant improvements in health care and health care delivery that are very much a mark of the last 2½ years of this government. It is finely ironic, and an irony that has not been missed by those on this side, and I think the community at large, that the very big splash that Mr Smyth makes this week actually refers to a Productivity Commission report into the last year—or the last sort of gasps or staggerings—of the previous government.

It is finely ironic that we see the current Leader of the Opposition essentially bagging the state of the Canberra hospital that we inherited from Mr Smyth in 2001. It was a budget

brought down by the previous government in relation to the Canberra hospital that was reviewed essentially by the Productivity Commission. It was their budget and their commitment—I think non-commitment would be more appropriate—to health care and health care delivery in the Canberra hospital that the Productivity Commission reported on and that Mr Smyth is now bagging. It is a classic case of shooting yourself in the foot.

It is important to look at what we inherited at that stage. Our memories are long enough not to have forgotten the state in which we found the Canberra hospital—the state in which nursing services were being provided, the absence of any commitment to radiation oncology services and of course the savagely flawed purchaser provider arrangements that simply divided and allowed no commitment to the delivery of seamless health service for the people of the ACT.

Those things have been addressed. We have brought nurses' wages into line with those in New South Wales. We have overcome the enormous work force inadequacies that were being faced by nurses within the ACT health care system. We have worked hard and assiduously to deal with work force issues affecting radiation oncology and other parts of the hospital. We have made a proper and appropriate commitment to the funding of the Canberra hospital and to all of those people within the health work force throughout the ACT. These expenditures were long overdue. It is rather artful of the opposition to criticise, and it raises the question: exactly which additional expenditure of this government do the Liberals propose to cut? Would it be our additional expenditure in relation to wages and payments to people within the system, in relation to the commitment that we made to better health care delivery through the Canberra hospital, and indeed throughout the community, or the significant increase in funding for psychiatric and mental health care and facilities that is a hallmark of this government? Which of these initiatives, this additional resourcing, do the Liberals propose to cut?

The fundamental issue here is that Mr Smyth cannot criticise, as he has this week, up to the next election without saying which parts of Canberra hospital funding he is going to cut.

MR SPEAKER: Order! The time for the discussion has expired.

Human Rights Bill 2003

Debate resumed.

MRS DUNNE (4.43): I rise in support of my colleagues Bill Stefaniak and Steve Pratt to oppose this bill. Those colleagues have referred to the risks of transferring power from the legislature, with its checks and balances, to the courts. Today Ms Tucker noted in her speech that we have a history of minority governments. I for one think it is one of our protections in a unicameral system with no reserve powers. The Chief Minister rails at the fact that the power of this legislature—by which he means himself—should ever be constrained by the federal government, by the Australian Constitution or by the National Capital Authority. But what he proposes to do under this bill—although he is not here to listen to the speeches—is to hand over to the courts an even greater power to set aside the views of the legislature, without any of the checks and balances that come from a legislature.

The protection of human rights relies on a consensus across society. One might say almost that where such a consensus exists no legislative protection is necessary, and where it does not none is possible. Certainly none would be effective. What the Chief Minister is doing today is saying that, although we are a consensual society, a civic society, we should have a bill of rights imposed upon us of the sort that we would see in a much less civil society, one without the social capital that we have in the ACT.

Thus a prudent approach would dictate enacting rights which were the subject of broad consensus in society or in the legislature. In fact, the first substantive provision addressed in this most divisive of bills is perhaps one of the most divisive issues that has ever come before this legislature or its predecessors pre self government. That is the issue of life and when it applies. It is an issue on which the views of this Assembly and its predecessors, if you can judge by the various debates over the years, would appear to be finely balanced and nuanced. But this bill baldly asserts the most extreme position, that held by the current Chief Minister. So much for the rights of conscience! When I read this provision, I was struck by the juxtaposition in clause 9(1), which states that everyone has a right to life, with clause 9(2) which says, "This section applies to a person from the time of birth." The Chief Minister giveth and the Chief Minister taketh away. It does not matter what has been debated in this place time and again on this particular issue and others. And does that not make you feel just a little embarrassed, just a touch apprehensive, that you can stand up and declaim the most fundamental human right, and then in the next breath qualify it. You qualify who it applies to. Does the Chief Minister really imagine that the right to life is something he has bestowed and that he can revoke it at will? Does he imagine that, if he wished to, he could declare that it does not apply to Aborigines, or TV reporters, or members of the Liberal Party, or any class of people that he does not like? Does the fact that the government believes human rights are something it gives out at its absolute discretion, like jobs for the boys, not give members a small niggling doubt about the value of prescribing a list of what are our rights, thereby somehow diminishing the things that are left off the list.

If we go down this road of asserting rights by fiat without regard to the actual views of the community, we will end up with the Soviet constitution. That was the approach that we saw in the cold war era and before and it is not merely ineffective but counterproductive. It obscures the absence of human rights. For generations, whenever people asked, "What about all those political prisoners, the gulags, the censorship, the torture, the extrajudicial executions?" the Soviets and their Western apologists said, "Nonsense, It is just propaganda. It couldn't happen here. This is a workers paradise." Legions of people went to the Soviet Union to look around and came back and said, "I have seen the future and it is a marvellous thing." Mrs Roosevelt was a good one; she was doing it all the time. At the time people were saying, "We have a workers paradise. Look! We have a marvellous constitution. It has wonderful protections for human rights."

Mrs Cross touched on this this morning when she spoke of regimes that pay lip-service to human rights in grandiose terms, when there is a yawning gulf between those statements and the hideous realities of life and death under those regimes. The sad fact is that, as Mrs Cross noted, protection of human rights is not something that can be done by the stroke of a pen, by imperial fiat. It requires vigilance through the legislature, through the legal system and through the administrative structures. It needs accountability, it

needs questions in estimates, it needs questions in legislatures, it needs people to read annual reports and it needs people to read committee reports. It requires bloody hard work, and it does not mean standing up in this place and talking about fashionable slogans like advocacy for the disadvantaged when you do not even notice that actual people you're directly responsible for may be in grave danger.

This is what we are talking about. We are talking about people. I worry about those people opposite when they start talking about humanity with a capital "h" and human rights. It becomes a bit of an abstraction. It is like talking about "the people" in communist societies. It is a characteristic of those on the left that they care compassionately about humanity with a capital "h"; it is just the people they do not like. This Chief Minister is happy to invest massive resources in grand gestures on behalf of humanity and in defence of human rights. He just is not interested in people whose homes are threatened, in children in the care of the government, in constituents who vainly try and get an appointment. Where in this bill are there rights of children in the care of the government to be protected as the law already says they are?

Ms Gallagher: That's covered in another piece of legislation.

MRS DUNNE: Where in this bill are the rights of people to be warned when their houses might burn down? Where in this bill are the rights of old people in hospitals who are in the wrong sort of accommodation for their needs to get the right sort of accommodation for their needs? This Chief Minister sees this as an act to be graven in stone, as his memorial, his gift to future generations. He sees himself as a sort of Moses of the enlightenment, standing with a series of "Though shalt nots". He is a sort of modern model of Shelley's *Ozymandias*:

> My name is Ozymandias, King of Kings
> Look upon my works, ye mighty, and despair

Of course, those of us who know a bit about Shelley will recall what became of the proud boast by the time Shelley's traveller arrived: all that remained of the statue was a head and legs; an armless, heartless, gutless figure with a sneer and a pedestal.

What we have here today is not a recipe for a fixed moral code. Let us look at some of the amendments that the minister is proposing. Clause 8 is headed "Recognition and equality under the law". Does anyone seriously think that in Canberra in 2004 people do not have recognition and equality under the law? What element of the grandiose clause 8 of this bill will make our recognition and equality under the law more recognisable or more equal? Not one jot.

I have touched on the fundamental rights to life, but I have also looked at clauses 10 and 26 which talk about torture and being forced to work. What has this Chief Minister done over the past year on the issue of sexual servitude? When I raised it, and when it was raised by other people in this place and across the country, he joined the band of men across this country who said, "It does not really happen; it is anecdotal evidence; it is not a real issue. Of course, if it happened, we'd be horrified; but this is a nice middle-class country and this sort of thing does not happen." Well, that has been proved to be wrong.

What has this Chief Minister done about the servitude of women, the women being sold into slavery for sex in this country and in this town? Nothing. And what will protect their rights in this piece of legislation? What in here will protect their rights one jot more? Not a thing. It goes on and on. It is grandiose and high flying. He is trying to create a fixed moral code but what he is in fact doing is creating a recipe for strife and dissension, as the meaning of each piece of legislation will be fought out in the courts and in the Assembly and in the community.

What will happen, as has happened in other places and has been brought to our attention by Mr Stefaniak and Mrs Cross to some extent, will be that these rights will be fought out and extended to people who have given up some of their rights to be treated equally because they are criminals, offenders, who have been sent to jail by juries of their peers. They will use these provisions to try and get out of jail, to try and winkle out of the law, to try and winkle out of facing justice. This is not a path that this country should be going down. This is not a path that the capital city of this country should be going down.

The Chief Minister, in trying to build up his great edifice, his great memorial, fails to recognise that this is not a constitution he is introducing here; this is just another bill for an act and it cannot bind future legislatures. This is statute law of a subordinate legislature and there is nothing to stop our successors from amending it, deleting it or ignoring it. It does not ensure fundamental human rights because the subjects who take interest in this will be really indulging in ongoing partisan squabbles. There will be temporary changes in the composition of the Assembly and governments over time and this piece of legislation will just wander into insignificance like much that is done in this place. If you tell yourself you have safeguarded human rights for the future when all you have done is rewarded yourself the right to be smug, you should think again. We will not be safeguarding the rights of people in the future. We will do that, as I said, by being constantly vigilant, by ensuring that there is a consensus across society about what is just and what is not. This does not do that. We have to move further from focusing on actual rights as a sort of broad thing to focusing on the actual rights of actual humans—of actual people—rather than broad grandiose statements. I will conclude by asking: what will become of this grand memorial? I refer back to the last lines of *Ozymandias:*

> Round the decay
> Of the colossal wreck, boundless and bare
> The lone and level sands stretch far away.

MR CORNWELL (4.57): It is interesting that the proponent of this piece of legislation is not present, and indeed the Chief Minister's colleagues have been conspicuously silent in this debate.

Ms Gallagher: I am just waiting, Mr Cornwell—just waiting. It has been such a stimulating debate.

MR CORNWELL: Well, I wish you luck because you will have difficulties defending some of these points. We have of course had over the years in this Assembly an erosion of people's responsibilities as the majority, I regret to say, in this place have consistently chipped away at the idea of people being responsible for themselves in favour of having Big Brother take over and look after them. There have, of course, been some spectacular

failures in this. I am thinking more recently of the problem of child abuse. No doubt that matter will be looked at in some detail, but it does indicate a depressing event when Big Brother purports to be able to look after everybody and then fails so miserably.

I am sure this Big Brother approach has now reached its zenith with this issue of a bill of rights. We are now going to have the rights of everybody protected, although perhaps not as much as some members would like; I think Ms Tucker was lamenting that earlier. Certainly, the intention is to protect the rights of people under two of the international covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These two covenants set out to cover self-determination, work and just conditions of work, protection of the family, the right to health—that will be an interesting one for this government, will it not?—the right to education, the right to life, the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment—

At 5 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 CORNWELL: It goes on with the right to a fair trial, the right to privacy—there is an interesting one—the right to freedom of thought, conscience and religion, freedom of movement, the right to vote, equality before the law and non-discrimination. All of these are remarkably commendable; they are in fact motherhood statements. And, if it is the wish of people, they are unenforceable. Fortunately in this country we do not have that situation. We do not have people attempting to deny the right to liberty, the right to a fair trial, the right to freedom of thought, conscience and religion, freedom of movement et cetera; we do not have that problem here. But, no matter how lofty the motions, these rights are unenforceable if people decide not to allow them to prevail.

The unenforceability of those rights within those United Nations conventions applies equally to this bill, according to the report of the ACT Bill of Rights Consultative Committee. One of the points states that a bill of rights would implement locally the international statements of rights to which Australia is committed. These were arguments for the bill of rights. That is okay and fine, though I must admit that, at one of the very poorly-attended meetings—25 people were there in fact—the majority were against any bill of rights. A couple of points were raised that I thought were interesting. One of them—would minorities really be better off?—I think I have answered already, but I will come back to that shortly. Another was: how do you change a right which is no longer acceptable or relevant if you incorporate a bill of rights? Are we going to have these things coming back here all the time for amendment? And, if we are to implement these points, how do we implement one that I did not mention but I will mention now, and that relates to the right of ethnic, religious or linguistic communities to enjoy their own culture. Perhaps somebody far more knowledgeable than I, my colleague Mr Stefaniak, might help me. How do we get over the right of ethnic, religious or linguistic communities to enjoy their own culture in this country if they practise female circumcision? It is also true that in Mali, which is in West Africa, there is a Tabaski feast which is held by Muslims in which a sheep is slaughtered by each family. Will this also be allowed in Australia if people from Mali wish to practise their right of ethnic, religious or linguistic community to enjoy their own culture? I do not know where you draw the line on these things. What I am saying, however, is; is this just another sop,

another attempt, to win over the multicultural vote in this forthcoming election? I do not know, but I am not convinced that that is what multicultural communities want here any more than do Australian communities.

Another point in argument for a bill of rights was that a bill of rights would empower the socially disadvantaged and those citizens most susceptible to right abuses. How? How would it empower the socially disadvantaged? It is not a question of the socially disadvantaged not having the rights of everybody else; it is simply that they do not have the opportunity to use them. And passing a piece of legislation of this type is not going to assist them to do so. You can have all the legislation in the world, but socially disadvantaged people will not have the opportunity to use it. The government seem to imagine that, once the bill of rights is passed, it will be a magic wand that we just have to wave and everything will be all right for all the people out there that are socially disadvantaged. I would like a definition of "socially disadvantaged" too, by the way, because I think we may find it is extremely broad. Nevertheless, I repeat: how do you empower those people? I would imagine that the way to overcome the socially disadvantaged is to address questions like poverty, education and, certainly in some countries, overpopulation. But I do not really think that we are going to assist them by passing a bill of rights or something similar to that so that they all feel so much better for it. I think this has been very, very well demonstrated by the Right Reverend George Browning, the Anglican Bishop of Canberra and Goulburn. Mrs Cross referred to a letter he wrote and I would like to do the same and quote from it. Talking about values, he said:

> Of course all the values, which the Bill seeks to preserve, are honourable, but it is misleading to signal that such rights can be preserved through legislation. Fundamental rights, hopes, values, dignities are only deliverable through the forging of communities where trust and respect dominate over fear, suspicion and a competitive disregard for others.

He goes on at a later point—and this is particularly pertinent to our Chief Minister, who is always talking about these people:

> The seventh point of the preamble specifically mentions the needs of the Indigenous people. The emphasis is one that I deeply applaud. However, it is ironic that the Bill should, in my view, give false hope to the Aboriginal and Torres Strait Islander people. Anyone who knows anything about indigenous culture knows that an inappropriate emphasis on the individual has contributed to the pain and not the health of that community. Indeed, if anything, indigenous culture subsumes the "rights" of the individual into the dignity and values of the community to which the individual belongs. It is hardly too much of an exaggeration to say that one of the greatest losses experienced by Indigenous people has been the loss of their sense of community brought about by assimilation into a culture dominated by the idea of the individual.

That is the statement by Bishop Browning. He also goes on to raise an interesting point:

> I can imagine a future situation in the ACT where elders—

That is indigenous elders—

> decide that for the sake of the community poker machines and alcohol should not be available at, say, an indigenous clubhouse. In other words the rights of the individual to drink alcohol or gamble would, in these circumstances, be considered a lower order matter than the health of the community and the safeguarding of the children.

I shall be interested to hear the Chief Minister's response to this because, from my understanding of something that I read in the newspaper today, no-one in the government has had the courtesy so far to reply to Bishop Browning's letter. Perhaps they will have the decency to respond.

Ms Gallagher: Except me.

MR CORNWELL: You acknowledged it—I apologise, Ms Gallagher; thank you—but not in detail, I suspect, and therefore I will be asking the Chief Minister, and I would hope, when he winds up this debate, he will have the decency and courtesy to respond to those matters.

It is, therefore, of concern to me that we have this piece of legislation before us. I was thinking about it earlier because I had taken a note some weeks ago, on 18 November when the US ambassador was here. He made an interesting point, which I think is germane to this legislation because it is germane to this debate. In 1939, there were 12 democracies in the world. In the 1970s there were something like 40. In the 2000s there are something like 120 democracies. I suggest to you that the majority of these democracies—having risen, as I said, from 12 in 1939 to 120 in the 2000s—do not have a bill of rights, Chief Minister. I would think, in fact, that they are managing quite well as democracies so as not to bother with such an unnecessary, expensive, time-consuming piece of paper. Well, it is a not a piece of paper; it will be a very thick collection of papers, I suppose.

I suggest that the people of the ACT do not need this legislation. It is a desire, I suspect, of the Chief Minister rather than the Labor Party. I believe that it is one of these fetishes that he has from time to time about human rights. He is entitled to that view, but he is not entitled to force this type of thing on 320,000 citizens of this territory. And my advice to them is to be frightened—very, very frightened.

MS DUNDAS (5.12): The ACT Democrats are proud to support the introduction of the Human Rights Bill here in the Assembly. The Democrats have a solid commitment to human rights. We have a long-held policy supporting the establishment of a federal bill of rights, and we support the recognition of human rights at the state and territory level. We believe that a charter of rights is essential as a means of promoting democratic freedoms, collectively in terms of social justice issues and individually in terms of personal rights and freedoms. Without a comprehensive charter of rights, there is insufficient entrenched protection for the basic civil liberties and human rights of citizens from the will of the government of the day.

There has been a lot of debate already about why we need a human rights bill or even a bill of rights, and I think there are some very simple answers to that at the moment. The common law and our system of government do not offer adequate protection against the abuse of human rights. There are no guarantees that future governments will respect

human rights. There are currently very few restrictions on the laws that the government can pass if it has the numbers. I believe that this Assembly does need to enshrine in some legislation what we believe needs to be embodied as a bill of rights so that people can look up to this document and work with this document to see that their rights are protected, along with all the other laws here in the ACT. A charter of rights and freedoms, or the Human Rights Bill that we debate today, is a human rights safety net. We should see it as a shield to help protect people and enable citizens to know what their rights are and to exercise their freedoms underneath them.

Some points have been put forward that there is no need to have this bill of rights because our rights, even though they are not written down anywhere, are protected because we live in a healthy and safe democracy. Well, some of the submissions that came forward to the Bill of Rights Consultative Committee challenged that fact, and I will share some of them with members so that they can hear from those people who are concerned that their rights are not being protected. The report states:

> The Welfare Rights and Legal Centre and Tenants' Union ACT told the Consultative Committee that there were a number of areas in which existing ACT laws were not sufficient to protect the most vulnerable. It identified seven principle areas of concern including: the rights of those with a disability; the rights of Indigenous Australians; the rights of refugees; the rights of women; children and young people's rights…issues relating to housing; and rights of prisoners.

A number of people put forward issues in relation to indigenous Australians and how their rights are not respected in the same way as those of others are. An important comment that was made to the committee was from Val Pawagi, who referred the consultative committee to the Gallop inquiry and said that the Gallop inquiry had "found that the rights of people with [a] disability living in group houses have not been adequately or effectively protected by the policies and systems operating in the ACT".

So within the last five years people in the ACT have had their rights infringed or not properly protected, and that is why we have the Human Rights Bill before us, to address those concerns, to work to ensure that those people who are most vulnerable, who need this protection, can have it afforded to them. That is why I am proud to stand up and support the Human Rights Bill that is before us today. But I would like to say that I think this bill does not go far enough. Especially considering the thorough evaluation and consultation process that was undertaken by the ACT Bill of Rights Consultative Committee, I think we have ended up with a bill that includes only a subset of the human rights clauses recommended by the consultative committee, so the bill will have only limited effect on the rights of ACT residents.

The positive thing about this bill is that it makes it very clear to everyone that our rights are being taken away when this happens as a result of a new law. We will have the discussion and consultation under the Human Rights Bill about every new piece of legislation. This is better than nothing but it falls far short of the promise offered by the consultation process for an ACT bill of rights. So I will be putting forward quite a number of amendments, which I will speak more about at the detail stage, that seek to expand the set of rights created by the bill, to include the rights in the International Covenant on Economic, Social and Cultural Rights.

More importantly, my amendments also seek to create a way for a person whose rights have been infringed to raise this violation in the public domain and get some assistance in their efforts to see justice done. A very important part of the Human Rights Bill process is that we have the enshrinement of our rights and we have the discussion here in the legislature about what that means. We should also then allow mechanisms for people in the community to take forward issues in a non-legalistic and non-expensive way.

I commend the government for an innovative process to protect human rights in the ACT and I am willing to support the law that strengthens human rights, however minor that strengthening might be. But I do lament what I see as a missed opportunity to shape the law of this territory so that it does put us at the forefront of human rights law. I hope that some of the amendments that I and other members will put forward today will be accepted by the Assembly so that we can have a piece of legislation that not only enshrines human rights into legislation but also provides us with a mechanism for using those rights and for allowing citizens to take up concerns.

The Democrats are committed to furthering respect for basic human rights standards. A human rights bill will help to achieve this goal. We should not be afraid to establish minimum legal standards that the government must meet in the manner in which it treats its people here in the ACT.

MRS BURKE (5.20): Mr Deputy Speaker, much of what is going to be said has already been said. I feel that in many ways it is a bit pointless to stand up here and say anything about this subject, given that we have a very adamant Chief Minister who has bowled into it without really bringing the Canberra community with him on it. I am just disappointed at that. I am all for positive change. I am all for improving things and making them better. We already have a system in place that possibly needs to be improved upon in some areas in which it is lacking. My concern is that, instead of doing so, we are going down a path into some brave new world and we do not really know what we are heading into. I am most concerned about that.

I am no lawyer and I stand to be corrected by two learned gentlemen in Mr Stefaniak and Mr Stanhope, the Chief Minister—one more learned than the other—but I have just looked through report 42 of the scrutiny of bills committee of 15 January 2004 and there are some issues in it that do not seem to have been resolved. To this stage, to my knowledge, the government has not put forward any amendments to rectify some of the clauses within the bill that the scrutiny of bills committee found to be quite concerning and, as the committee said, raised for debate in the Assembly questions about whether those elements give or would lead to insufficient recognition of personal rights and liberties.

I feel that this legislation is in a bit of a mess, quite frankly; but, for some reason, the Chief Minister has seen fit to proceed hastily with it. I do not know why. Is it to appease some groups that are lobbying him particularly hard? I am not sure. I do not know the reason or what is his agenda, but he is still proceeding with it in the face of leaving the majority of the Canberra community behind. I find that absolutely staggering. This issue is not one for plain sailing as there are so many flaws within this bill, but the government is going along this brave new path with its eyes wide shut.

Much as I am in favour of people having rights, I am also concerned that we are becoming a lopsided society in which there are no corresponding responsibilities; the weight of the scales is going madly the other way. Of course people need to have rights and there are elements within our community that are very hard done by. We need to give them greater support, not to have some brave new legislation that we do not really know where the dickens it is going to take us. World experiences are now showing that the situation is slowly becoming a disaster in a lot of the areas that this bill purports to help.

I think we do need to get one thing straight and to have the comment placed on the public record: the bill of rights has not been requested by the majority of ACT residents. In fact, the opposition requested that a territory-wide plebiscite be held on the issue. However, the idea was dismissed out of hand by the government; it would not even consider that.

I have pulled together a few relevant comments made by the Chief Minister over past months and they are interesting. He said that the government will not impose a bill of rights on Canberra. Really? My research is telling me that many people are just throwing their hands up in the air and saying, "What's the point as he is not going to listen anyway? He will just do what he wants to do. He has the numbers in the Assembly to do that and he can go ahead and do it." People in the broad community are very concerned. Perhaps the Chief Minister is not listening to those people.

Mr Stanhope made that comment In a media release on Wednesday, 3 April 2002, Mr Stanhope said:

> A decision on whether we should proceed has to be tested in discussion with the community, and that is one of the roles of Professor Charlesworth's committee.

I dare say that that was just a lip-service comment. It surely has turned out to be that. The discussion with the community has not been a huge success, according to many writers and observers. If you are going to have something like that you should be honest and have proper consultation. Do not just pay lip-service to it and say, "We've consulted."

A gentleman by the name of George Williams suggested in a Saturday edition of the *Canberra Times* in, I think, November that there was apparent majority support for a bill of rights on the basis of the consultative committee's submissions process and a deliberative poll. However, only the tiniest proportion of Canberrans would have even contemplated making a submission to the committee and the statistical validity of deliberate polling remains controversial. Those comments were by courtesy of Jason Briant, who is the executive director of the Menzies Research Centre.

Furthermore, Williams neglected to mention that apparently only approximately 120 people in total—that's right, 120 people in total—could be bothered to go along to all of the community meetings also held as part of the consultative process. I understand that somewhere there was a little chart and a Powerpoint presentation at which we were told that thousands of people—I think it was about 1 per cent of the population in total, about 2,500 or 3,500 people—had actually been asked in some way or another. I would like to know what the questions were. We all know about trying to get the outcome that

you want from the questions that you ask. That was hardly a ringing endorsement or suggestion of widespread interest in the issue.

Mr Stanhope also said:

> My government promised it would not progress a Bill of Rights unless there was strong support for one shown by the Canberra community.

Where is this support, Chief Minister? Are you sure? You are not going to stand there and tell me that you are relying on 120 people in total being bothered to go along to community meetings, are you? Is that your basis for this? Scary! It is very clear that the bill of rights has not been supported by the ACT public, contrary to the Chief Minister's comments.

As my colleague Mr Stefaniak and many other people have said, and it is worth repeating, over the last year the Canberra community has shown no interest in the human rights issues that Mr Stanhope has forced on the community. Possibly, Mr Stanhope thinks he gets the imprimatur of the Canberra public by saying that people are not against it because they are not writing in or doing much. I have had many emails. Again, quite sadly, the Canberra public know that they are going to have a bill of rights slapped on them whether they want it or not, with no proper consultation.

I do not think that any fair-minded person would be against people having their rights. Every fair-minded person in this place or outside of this place would say that a portion of our community need to have better support and help and their rights to be heard, but do not say that 323,000 people are saying that. I was going to say that this just seems to be using a Rolls-Royce when a mini would fit, but I would not give it that sort of classification. It is certainly a hefty piece of legislation to deal with a small group within our community.

That brings me to another comment by Jason Briant. He said:

> So, why then is a Bill of Rights being pushed so hard by some in the legal and human rights fraternity in spite of little evidence of public support for the idea? One cannot help but be suspicious as to whether there is a broader agenda here, an agenda to seek implied rights unlikely to be popular with the electorate. Facing no likelihood of getting their agenda turned into law before a largely hostile electorate via democratic means, the legal and human rights fraternity are instead seeking to find a more sympathetic arbiter on such matters, that being the courts. The instruction to "interpret" laws so as to be consistent with the Bill of Rights is an almost open invitation to judicial activism.

Many people talk about that, but it seems that the government—in particular, the Chief Minister—is not at all concerned about it. Mr Briant continued:

> On the basis of past experience (both in Australia and much of the rest of the western world) it would not take long for the judiciary to find all manner of implied "rights" for certain groups or individuals not clearly set out in the legislation.

We are opening Pandora's box; we are opening a can of worms. This legislation has not been thought through. It is hurried and rushed legislation. Things like this legislation

should be built over years, not over a matter of months, possibly much longer than the Chief Minister anticipated. If the Chief Minister were true to himself, he would admit that there are some things in here. Perhaps he is hoping that the legislation will be introduced, off we will go and—"Oops, there's a mistake. Oh, dear, we've got a problem"—have policy on the run, fixing problems on the run. That would not be a very good outcome for the people the Chief Minister is purporting to help. I think that that is a pretty cheap way of getting people on board.

As I have said, I understand that the six public meetings held in Canberra to discuss the bill of rights attracted only 120 residents, the largest group being 40 and the smallest only four. This is a shambles. The Department of Justice and Community Safety, in its March quarterly performance report, revealed that reports to the Human Rights Office were down by over 10 per cent. That came out via Mr Stefaniak on 12 May 2003.

A bill of rights has already been rejected by all the other Australian states and territories, with Bob Carr and Peter Beattie being particularly outspoken on the issue. Indeed, Mr Carr pointed out that many of the most brutal and oppressive dictatorships the world history—I know that it has been said in this place, but let's keep reminding ourselves—have had superb constitutions guaranteeing all manner of human rights. Human rights are best protected by the strength of the values in the community and no set of words in and of themselves is capable of guaranteeing that protection.

It is interesting to note as well how the public feel. They have really been bamboozled by this bill. It is a very complex bill, extremely complex for the layperson. Mr Stanhope has alluded to that himself. He said that there are many issues and many facets to this bill. How we in this place think is not how the general public outside of this place think. Just when we are sick of hearing something, they are only just getting the idea. My concern is that the general public have not yet got the idea.

Perhaps the Chief Minister can help me on this one; I am sure that he will: the ACT Department of Justice and Community Safety already has under its control a Human Rights Office. I am not clear on whether that office has been established, Chief Minister. I noticed in the financial performance statement for the Human Rights Office in the annual report for 2002-03 that the office policed the Discrimination Act 1991 at a cost of $566,000 in that financial year. I have not heard too much about what is going to happen to that office and how it is going to fold into that. It would be good if the Chief Minister could talk to me about that.

The currently proposed Human Rights Act is significantly different from the draft bill. How many people know that, other than those of us in here? We are all very familiar with it and we keep hearing about it, but how many others know that it is significantly different from the draft bill prescribed in the original document? There is a couple of fundamental differences. There are no mechanisms for the Supreme Court to issue a declaration of incompatibility on the basis of a piece of legislation being inconsistent with the Human Rights Act. I understand that that falls within the purview of the Chief Minister as the Attorney-General. There are issues around reporting on such and the report has to be within six days. It just seems that it would be an administrative nightmare for the Attorney-General personally and for his department.

Most rights are being removed, including cultural, economic and social rights, with only political and civil rights remaining. I heard Ms Tucker say that she was very disappointed that the bill has been severely watered down. Why are we having it at all?

Mr Stefaniak: Let's see if we can bankrupt the territory in two years instead of 10.

MRS BURKE: Exactly. Let's watch how it goes, and it will. The current proposal is to establish the office of Human Rights Commissioner who, presumably, will also enforce the Discrimination Act 1991. Again, I need clarification from the Chief Minister about what will happen to the Human Rights Office people and their jobs. Perhaps he will clarify that for me.

There seems to be little, if any, substantive concern with the Discrimination Act 1991. *(Extension of time granted.)* I reiterate: why are we reinventing the wheel? Perhaps Mr Stanhope can tell me that as well. Why, in simple terms, is the Discrimination Act not going to fit the bill? Why are we going to have to go down a complicated path? In fact, it is not complicated. As Ms Tucker said, the bill has been watered down. What a mess!

Tell me why that act is not going to do the job of helping the people in our community most in need, of helping people with their rights. Explain to me and, for the purposes of the public record, have it recorded in *Hansard* why it will not. Why haven't you been able to upgrade whatever areas are needed in that act for it to work better? This is bureaucracy gone mad.

The role of the Human Rights Commissioner, on initial assessment, will be only an educative one—if that is not right, please put me right—because the enforcement powers under the original draft bill have been completely removed. Is the commissioner to be a toothless tiger?

It can be and is being argued that the Human Rights Act will further enhance a culture of litigation in Canberra—I have already alluded to that—particularly with regard to so-called frivolous claims. This is poignant. Let's look at a litigation case against John Laws and Steve Price by a homosexual man in Sydney. The case was related to comments made by both announcers in reference to two openly gay men on the TV program *The Block*.

Mr Stanhope: What have you got against gay men?

MRS BURKE: No, it is because it is a good example, Mr Stanhope. The plaintiff felt aggrieved by the comments, even though he had never met the gay couple in question. The thing is that it does not matter who they were; it is just that this guy has now stuck up his hand to make some comment about something he heard on radio, not having even met the people in question.

Also note in regard to the frivolous claim argument that the racial vilification legislation in Victoria has allowed and facilitated the Islamic Council of Victoria to take action against two pastors, one a previous Islamic scholar. The legal basis for action is premised on the argument that two recent Islamic converts were in the Surrey Hills audience when

the two pastors gave a comparative lecture on the Bible, Koran and Haddiths and felt that their lives were being threatened.

Mr Cornwell has outlined some of the multicultural problems that we may face under this bill. Have you really thought it through? Perhaps you are going to tell me in a moment; I am sure that you cannot wait to do so. I can see that there are going to be some real issues crop up. You have not thought about that.

Senior lawyers in the ACT strongly argue that the implementation of a human rights act would serve only to benefit lawyers who profit from turning community values into legal battlefields. Is that what you want, Mr Stanhope? That is your background. Perhaps that is your ulterior motive. I do not know; you might tell me. You are certainly not going to help the community values aspect of the matter.

Many lawyers argue that adherence to the Human Rights Act will be very arduous on all organisations. As I have said, there will be more red tape, more layers of bureaucracy and more confusion. Let's blind people. Let's not keep it simple; let's make things more difficult for people. For instance, organisations will and must adopt—

Mr Stanhope: Ha, ha!

MRS BURKE: Mr Stanhope sits there laughing. Tell me whether this is wrong: organisations will and must adopt new internal policies to reflect the Human Rights Act. Is that right or wrong? It is wrong; okay. You can tell me why. Some have told us that the most fervent objection to the Human Rights Act has come from senior ACT bureaucrats, who argue that adherence to the act will pose for most departments serious compliance problems and potentially open them to litigation.

If that is not right, you had better tell me. You had better tell your departments as well. If they are going to be open to litigation, you had better make sure that they know and you had better be helping them to put structures in place that will protect them. It is also argued that the Human Rights Act may well serve to benefit criminals by enabling them to escape imprisonment on the grounds of a human rights technicality.

Mr Deputy Speaker, I will not be supporting the Human Rights Bill because I believe in and concur with the notion that human rights are best protected by the strength of the values in the community and, to reiterate Mr Briant's words, no set of words in and of themselves is capable of guaranteeing that protection.

MS GALLAGHER (Minister for Education, Youth and Family Services, Minister for Women and Minister for Industrial Relations) (5.40): I value the opportunity to speak in support of this legislation, which is important for the ACT and the development of human rights in Australia.

Australia became a party to the Universal Declaration on Human Rights in 1948, an event tied closely to the formulation of international institutions such as the UN and consciously built out of the horror of war and a shared desire for a humanitarian international order. We became a signatory to the International Covenant on Civil and Political Rights in the early 1980s, which in many ways sparked debate in Australia about the need for a bill of rights.

The previous Whitlam government had attempted to place the issue on the agenda in the form of the Human Rights Bill 1973 which, along with the Racial Discrimination Bill 1973, was to serve as the bedrock antidiscrimination reform of the government. Attorney-General Murphy withdrew the Human Rights Bill after pronounced criticisms from the states, eager to avoid federal intrusion.

The Racial Discrimination Bill did become law and is now an accepted part of our egalitarian society. It has subsequently been recognised as leading legislation across the world. The Racial Discrimination Act has been joined by the Sex Discrimination Act and other elements of our human rights and equal opportunity framework in the years since 1975. Perhaps if self-interest had not stood in the way of the Human Rights Bill 1973, it too would be equally regarded today.

The bill before us today has a lineage which is linked to those reforms and this tradition. It explicitly encapsulates the ICCPR and gives it legal standing directly for the laws of the territory. These rights remain at the core of a democratic society and are deserving of protection and enhancement. Rights to assembly, expression, movement and due process are indisputably essential to guaranteeing democratic freedoms. As with the Canadian Charter of Rights and Freedoms and the New Zealand Bill of Rights Act, it is expected that these rights will be of particular relevance in ensuring that our legal system preserves the rights of those appearing before the courts.

The rights of individuals to fair and transparent processes under government will be enhanced by this bill. Whilst the Human Rights Bill will not give a new right of action against government agencies, it does put the emphasis on urging government to act consistent with the rights contained in the bill at all times in relation to the whole community rather than the actions of an individual. That will prevent unnecessary litigation while at the same time improving this systemic role of the bill of rights.

With the passing of this bill, human rights will be more fully integrated into the everyday actions of government. Assembly committees will publicly scrutinise bills for their human rights significance and the Attorney-General will prepare a public statement outlining the compatibility of any law with the new bill of rights. As more and more law is made through parliamentary legislation, these provisions become increasingly important.

Under the act, the Legislative Assembly will be able to make laws in the same way as it does now. This new legislation will not prevent the Assembly from passing laws that limit rights if it is necessary to do so, but it will require that human rights be taken into consideration during the development of new laws and will also ensure that the Assembly is fully informed if a bill departs from the rights enshrined in the Human Rights Act.

These provisions will improve the scrutiny of bills from the legislative end of the process. Public statements of these sorts will form the basis of more informed community debate and help many in the community to evaluate the actions of government against a recognised community and human rights standard.

Scrutiny of legislation affecting the rights of people within the territory will also be improved with the creation of a new role for the Discrimination Commissioner. The newly-created Human Rights Commissioner not only will be vested with review functions, but also will be an educative position taking arguments and debates on the applicability of human rights into the broader community, informing and including people in the process.

There has been an exhaustive consultation process to get the bill before the Assembly in its final form. Some of the so-called second generation rights have not been included in this bill of rights. The economic, social and cultural rights of Canberrans remain at the core of government activity in the territory. It is true that the bill of rights in its current form does not address these issues, instead focusing on the civil and political rights contained in the ICCPR.

Many of the rights contained in the International Covenant on Economic, Social and Cultural Rights remain close to my heart and close to the long term objectives of this government. The right to work, fair wages, gender equality in employment, safe and healthy work conditions, adequate leisure time, form trade unions, and equal opportunity in the workplace free of discriminations are all core values to the government in my portfolio of industrial relations. These values, even though not expressly contained in the bill of rights, do form the mission statement of this government's industrial relations agenda.

Additionally, the government's response to poverty and homelessness addresses directly the values of the ICESCR. Rights to adequate food, clothing and housing and the continuous improvement of living standards are a key part of the Canberra social plan, the living policy document of the ACT government's directions. The government pursues the values of the ICESCR more completely than many other governments in this country.

On the matter of federal government actions and the bill of rights before us, I would like to draw the attention of the Assembly to the provisions contained in clauses 10 and 11, which relate to torture, inhumane treatment and the protection of the family and children. It is a shame that this bill of rights does not apply to the hundreds of asylum seekers who remain interned in detention centres in Australia, just as it is a shame that the federal government not only denies the need for the protection of rights in the community but also actively works to degrade and undermine them in practice.

I am starkly reminded of the comments of Justice Bhagwati, special envoy for Human Rights Commissioner Mary Robinson, who visited Australia's detention centres not that long ago. Justice Bhagwati said of the conditions he saw and the people he met:

> They were prisoners without having committed any offence. Their only fault was that they had left their native home and sought to find refuge or a better life on Australian soil. In virtual prison like conditions in the detention centre, they lived initially in hope that soon their incarceration will come to an end but with the passage of time, the hope gave way to despair.

People will question why there is a need for legislation of this sort in a community like Canberra. Many people thought that the terms and descriptions employed by Justice

Bhagwati would never be used to describe conditions anywhere in Australia. The truth has proven far more stark and dehumanising than many people thought.

While there remain governments which treat individuals, groups of people or communities with such disregard, there remains a need for the shared rights of all to be recognised in legislation of the type before us today. It remains the role of those of us deemed to be "citizens" in Australia to ensure that the universal aspect of human rights is not forgotten as we advocate laws and policies under a new human rights framework. We must also remember and consciously include in our policies those who remain marginalised from active political participation.

While asylum seekers remain detained in Australia, indigenous Australians are denied land rights, women are denied equality of outcomes and workers are denied the right to economic justice, fair employment, security and prosperity, human rights law will never be complete. This bill represents a major step forward in the ACT as a jurisdiction recognising the rights and needs of its citizens. I look forward to seeing this legislation passed and the values contained within it given form by the people of Canberra.

MR SMYTH (Leader of the Opposition) (5.47): It is curious that, as we discuss this Human Rights Bill tonight, the Liberal Party, which has always been acknowledged as the party of the individual and individual expression, actually hates bills like this one because they try to catalogue that which is uncataloguable, if there is such a word, whereas the Labor Party, which is traditionally the party of the collective, actually wants to legislate what an individual's rights are. The irony of that is something upon which we should reflect as we discuss this bill.

I would like to start with some words from Bishop George Browning, the Anglican Bishop of Canberra and Goulburn. In the third paragraph of a letter which I understand he has sent to all members of the Assembly, he speaks about what it is to be an individual, saying:

> The Bill speaks of protecting individual human beings. It is, however, impossible to conceive of any human being (least of all their rights) in isolation; we all live in relationship with others and our capacity to flourish, or to live contented and fulfilled lives has everything to do with the strength of the community(s) to which we belong. In other words, the very rights we want to preserve can themselves be perverted when considered only through the eyes of the individual.

It is the eyes of the individual that lead me to claim that this bill is, in fact, probably the Monty Python bill of rights; it is like something out of *Life of Brian*. Members may remember the scene in *Life of Brian* when Brian says to his followers, "No. No, please! Please! Please listen. I've got one or two things to say." His followers say, "Tell us. Tell us both of them." Brian says, "Look. You've got it all wrong. You don't need to follow me. You don't need to follow anybody! You've got to think for yourselves. You're all individuals!" His followers say, "Yes, we're all individuals!" Brian says, "You're all different!" The followers say, "Yes, we are all different." Then Dennis says, "I'm not," Arthur says, "Shh," the followers say, "Shhh. Shhh. Shhh," Brian says, "You've all got to work it out for yourselves!" and the followers say, "Yes! We've got to work it out for ourselves!" Exactly.

That is the point that I think that this bill misses. Yes, we are all individuals, but we do not live individually. We live in communities. We live as part of the family that we live in. We live in a part of the streets that make up a suburb. We live in a part of the areas that are made up by those suburbs and the city of Canberra that is made up by those town centres.

I think that the flaw with this bill is either that it does not go far enough because we are too timid to do so or the government is too timid to do it or, more importantly, that it does not actually carry out that which it seeks to do. It is very much a Clayton's bill. It is very much fairy floss because under any examination it just dissolves.

The Chief Minister, in his preamble, says that he is very much interested in protecting the rights of the indigenous people. Point 7 of the preamble reads:

> Although human rights belong to all individuals, they have special significance for Indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

The irony of that is that the Aboriginal people and the Torres Strait Islander people very much believe in community and it is actually when they are put in isolation, whether in a European context or the isolation of a jail, that the Aboriginal people suffer most. I think that it is quite interesting that on page 2 of his letter—somebody else read this paragraph; perhaps it was you, Mr Deputy Speaker—Bishop Browning went on to say:

> The seventh point of the preamble specifically mentions the needs of the Indigenous people. The emphasis is one that I deeply applaud. However, it is ironic that the Bill should, in my view, give false hope to the Aboriginal and Torres Strait Islander People. Anyone who knows anything about indigenous culture knows that an inappropriate emphasis on the individual has contributed to the pain and not the health of that community. Indeed, if anything, indigenous culture subsumes the "rights" of the individual into the dignity and values of the community to which the individual belongs. It is hardly too much of an exaggeration to say that one of the greatest losses experienced by Indigenous people has been the loss of their sense of community brought about by assimilation into a culture dominated by the idea of the individual. The best that can be said about the years of the "Stolen Generation" is that white people mistakenly believed that it would be in the best interests of individual indigenous children if they were separated from their communities and brought into white society. Few would now disagree that this was not only a terrible mistake, but that a gross injustice was perpetrated. The language of the preamble does nothing to indicate that we have learned very much.

Therein is the rub. I will go through several examples of how something that purports to protect, enhance and guarantee the rights of individuals may actually erode and downgrade the individuality that we all seek to express in our communities.

I take exception to some of the things that the Chief Minister said in his presentation speech. For instance, on page 4 of his speech he says:

> But, in truth, Australia is a human rights backwater.

I would assume that he will claim the children overboard affair and sending asylum seekers to places in the desert as examples of Australia being a human rights backwater. But the very fact that those people seek to come here because they see Australia as a place to be, a place away from real human rights violations, would indeed indicate that Australia is not a human rights backwater. For instance, Russia has been quoted as well. Russia had a bill of rights in about 1937. A fat lot of good that did you in the gulag! At least you were happy under the knowledge that your rights were being protected by something passed by the soviet parliament!

If Australia is a human rights backwater, prove it. What evidence is there? Give us some examples. Let's look around the world at those that are nabbed off the streets by goon squads. Let's talk about those that have disappeared in various cultures around the world. Let's talk about those countries where human rights violations occur on such an extreme level.

We had the outburst today by the Chief Minister that John Howard killed 35,000 Iraqis. I have not once heard him talk about the millions of people that Saddam Hussein killed. Saddam Hussein killed millions of people. I saw one figure that said that either 10,000 or 100,000 Iraqis were dying a month. There was no violation of human rights there; he was just a dictator and you accept that from a dictator!

If Australia is a human rights backwater, let's prove it. The very fact that we are having this discussion today would indicate that we are not. We actually live in a free and tolerant society—well, some of us are tolerated, but others who dissent are yelled at by individuals, particularly in this place. But the very fact that we are having such a debate today indicates that we are free to do so and, I think, puts the lie to the claim that Australia is some sort of human rights backwater.

The next point occurs on page 6 of the Chief Minister's speech. I guess it is the ultimate contradiction in the bill. In the speech he says:

> Unless the law is intended to operate in a way that is inconsistent with the right in question, the interpretation that is most consistent with human rights must prevail.

So we are going to have a human rights bill that allows you to pass a law that violates human rights as long as it was passed with that express intention.

This bill is a dynamo of a document. We are actually going to legislate that you can pass laws that violate human rights as long as that was the intention of the bill. So much for standing up for human rights! I think it shows the impossibility of what is being attempted here. You cannot do it properly without eroding the rights of individuals. Therefore, I do not believe that you should do it all. I do not think the case has been made that we need such a bill of rights in this country today.

The major concern, and the thing that people should be very worried about, is addressed by the Chief Minister on page 7 and is about the declaration of incompatibility. We are actually going to pass the bill tonight; we can count the numbers. We are going to pass a bill tonight that says that the Supreme Court of the ACT can declare a new law

incompatible with human rights legislation, and what is the outcome of it? Absolutely nothing.

It comes back to the Attorney-General. The Attorney-General has, I think, six months to inform the Assembly. What will we do with it then? Zip, nil, nix, nada, nothing. It is the ultimate irony. We have the Chief Minister saying that he is going to stand up for human rights, but we are going to pass a bill that has no penalty and has no effect because, if it wants, the Assembly can pass bills that actually are in violation of human rights and, when the judiciary comes back and tells us that we got it wrong, we can ignore it. That's effective; that's good law making! It is not even sensible law. It is not law that is logical and it is not law that will have any significant impact on protecting people's human rights.

The sadness of it all is that some of us will pat each other on the back later tonight and go outside and tell everybody that their rights are much better protected than they were before this bill was passed, but the reality is that it is nothing but fairy floss. People may think that they are going to bed living in a safer society because Jon Stanhope, Chief Minister and Attorney-General, has passed the Human Rights Bill, but he has passed a toothless tiger. It is Clayton's protection. It is tokenism at best and, at its worst, it is just bad law; it is not logical law.

The reason I go on like I do is that what it does is that it actually asks the judiciary to pass commentary on the laws that we make and one of the great strengths of Westminster and the British system of government is, indeed, the system of separation of powers from the Assembly to the executive and the executive to the judiciary. I do not know how many people have bothered to read the report of the scrutiny of bills committee, but the committee focused a large amount on clause 28. The Chief Minister covered it on pages 8 and 9 of his speech.

The interesting thing is that we are setting up this system whereby a law can be commented upon by the judiciary. I quote from page 7 of the Chief Minister's speech:

> …I reiterate, lest there is any confusion on the point, the bill does not invalidate other territory law, nor does it create a new cause of action.

So we are going to create a law that allows it to be referred to or commented upon by the Supreme Court, to come back to the territory, to the Assembly, to the Attorney-General, with absolutely no cause of action. But in doing so, in asking the courts to comment on the laws we pass in this way, in a non-judicial way, we actually erode the separation of powers and the confidence that the public generally have in the court system. What will happen is that the courts will make a comment and that comment will come back to the Assembly. The Assembly can then choose to do what it wants with the comment, but in the process you have destroyed the degree of respect that I think most people hold for the court system.

On page 5 of the scrutiny of bills committee's report there is a section entitled "Should judges review the legality of laws against rights standards". It comes pretty clearly to the conclusion that they should not because that is not their job. I will read a few selective quotes. The report states:

> It is then argued that the degree of this respect—

that is, the respect that the public have for the system—

> turns significantly on the extent to which the citizenry perceives the judiciary to be independent of the political branches of government. Judicial independence is not in this sense a function simply of their tenure of appointment and the extent to which their salaries are fixed (although these issues, settled in late 17th and then 18th century England are critical). Public perception of judicial independence turns on the extent to which the judges are seen by the citizenry to be doing things that are distinctly different to politicians. In particular, it is argued that judges should not become involved in the tasks of the legislature and the executive. In particular, they should have no role in determining what the law should be. That is seen as a legislative function the province of the elected parliamentarians. Nor should they give advice about the law.

Those are the traditions. Mr Stanhope has a law degree. He should know about those traditions and he should know that today he is making bad law. Page 6 of the scrutiny report goes on to say:

> Thus, to the extent that judges do not play a distinctive role, and/or become involved in the work of the political branches of government, they undermine public respect for what they do in the exercise of their judicial functions. The central element of that function is of course to decide disputes by making orders binding on the parties. When public respect is undermined, the danger arises that respect for the rule of law is undermined. In turn, this has an adverse effect on the extent to which the rights of citizens are observed within the community.

(Extension of time granted.) I apologise to members. Earlier we spoke to the Chief Minister about suspending the standing orders concerning time limits so that people could speak longer on this very important bill. I suspect that I will be seeking several extensions of time.

The interesting thing is the middle sentence of that paragraph: "The central element of that function"—the judiciary—"is of course to decide disputes by making orders binding on the parties." This law allows judges to make suggestions to the legislature that are not binding and can be ignored. In effect, this bad law places politicians and assemblies above the law. That undermines the system—the system that ultimately guarantees your rights because when your rights are violated you take them into the system. We are now saying that we can have a system that undermines that.

On page 7, the scrutiny report refers to the Trade Practices Tribunal and Blackstone and says:

> The separation of the judiciary is no mere theoretical construct. Blackstone rightly perceived that liberty is not secured merely by the creation of separate institutions, some judicial and some political, but also by separating the judges who constitute the judicial institutions from those who perform executive and legislative functions…

I emphasise the word "separation". The report continues:

> The separation of judicial function from the political functions of government is a further constitutional imperative that is designed to achieve the same end, not only by avoiding the occasions when political influence might affect judicial independence but by proscribing occasions that might sap public confidence in the independence of the Judiciary.

Blackstone in this regard—a comment by Brennan J is noted elsewhere—actually talks about where political influence might affect judicial independence. I flag that we are actually legislating in this bill for interference in the court. The Attorney-General can go to the court and tell the court what he thinks; he is given a power to enter the courts and tell the judges what he thinks. The Human Rights Commissioner can do the same. Not only have we blurred it, but also we have actually given politicians an entree to the courts to tell them what to do. That, ladies and gentlemen, is a blurring of the separation of powers that just is untenable.

On page 8, the scrutiny report goes on to say:

> The non-judicial function—

the non-judicial function; what we are not doing in this bill is giving judges a judicial function, which is why they are judges, to make decisions—

> which this Bill would confer on the Supreme Court of the Territory is the power in clause 28 to make a **non-binding** declaration of the invalidity of a Territory law.

Remember, judges make binding decisions on parties. That is why they are judges. We are about to change that and make them non-judicial and non-binding. The Attorney-General should know that this erodes the very basis of our justice system. The report goes on to say:

> Whether such a power may be validly vested in the Supreme Court is not the point to which the Committee now draws attention. Rather, it is that it appears arguable that this power is incompatible with the judicial function of the Supreme Court, and given that the rationale for the incompatibility theory is the protection of the liberty of the citizen, there is an issue as to whether clause 28 is an undue trespass on personal rights and liberties.

What is this bill doing? It is becoming an undue trespass on personal rights and liberties. Mr Deputy Speaker, if you go over to page 9 of the scrutiny report, you will see that it goes on to say:

> It is, however, the conferral of that kind of role on the Supreme Court that is the basis for the argument—as explained above—that clause 28 might be seen as an undue trespass on personal rights and liberties.
>
> What exacerbates the problem is the nature of the task the Supreme Court must perform when it gives assistance and advice to the legislature. Judicial review against rights standards will or may have two effects.

> it will, on the one hand, vest in the Supreme Court a power to impinge upon the range of choices open to the other branches in respect of a vast range of social, political and economic issues, and—

again, you are blurring the separation of powers—

> on the other, may thereby diminish to some extent the authority of the legislature and ultimately of the power of the citizenry to govern themselves.

Attorney-General, you are eroding the very basis on which we govern ourselves. The report goes on to say:

> As these matters became evident, there would be a diminution of respect for the judiciary in the eyes of the legislature, the executive and the citizenry. There would also be calls for vetting of judges who decide these cases in order to ascertain the extent to which they would exercise their power of review.

There goes the independence of the judiciary. The report continues:

> Even allowing for the limited scope of judicial review that is part of this dialogue model, there is a clear risk that judges will be seen to be part of the political process and not independent of it. This in turn may lead to disrespect for the judges, disrespect for their authority, and lack of legitimacy for their decisions.
>
> For these sorts of reasons there are many judges with experience of the task of judicial review who say that this is not an appropriate judicial function.

I will read one last section of the scrutiny report. It quotes Sir Gerard Brennan, the former Chief Justice of the High Court, and it goes like this:

> Sir Gerard Brennan, a former Chief Justice of the High Court of the Commonwealth, has argued that to vest in the courts the function of review of legislation against rights standards would bring about "a massive constitutional change" which would evoke "a corresponding change in the judicial function and judicial method".

That is from his paper on the impact of a bill of rights on the role of the judiciary. He said:

> At the end of the litigating day, the translation of political, social and ethical values into legal principles must be articulated by the judge. He or she cannot avoid giving effect to his or her values in determining whether an impugned law or executive act is obnoxious to a Bill of Rights and unjustifiable in the collective interest.

Well done, Attorney-General! Single-handedly, with this bill this evening you have actually eroded the basis of justice in this country and undermined the rights that you say you seek to protect.

Mr Deputy Speaker, this bill cannot go ahead tonight. I would ask members of the crossbench to consider, in the light of that, whether to adjourn the debate at some stage

tonight because what is happening here is not a protection of human rights; it is the start of the downgrading of human rights in the ACT. *(Further extension of time granted.)*

In his tabling speech, the Chief Minister makes much of all the international declarations and codes that Australia has signed up to. He talks about the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Let us look at clause 9 of the bill, which is about the right to life. Clause 9 (1) reads:

> Everyone has the right to life. In particular, no-one may be arbitrarily deprived of life.

Clause 9 (2) reads:

> This section applies to a person from the time of birth.

That single line abandons the International Covenant on Civil and Political Rights and absolutely abandons the Universal Declaration of Human Rights, which recognises children's rights. The premise that the Attorney-General brings to this place is that, because we have been involved in the International Covenant on Civil and Political Rights and we have been involved in the Universal Declaration of Human Rights, we should have a bill of rights. He should read the covenant and the declaration

The ACT Right to Life Association put out a press release about this bill this morning. I want to quote a little bit from it. The press release reads:

> Human rights will be taken away from our smallest citizens if the ACT Government's *Human Rights Bill 2003* is passed, president of the ACT Right to Life Association, Mary Joseph, said today.
>
> The ACT's proposed Bill of Rights was introduced into the ACT Legislative Assembly in November last year as the *Human Rights Bill 2003* by the Stanhope government.
>
> "The Government claims the Bill is based on the International Covenant on Civil and Political Rights…but it violates Article 6 of the Covenant which protects the right to life without any qualification or limitation whatsoever. This Bill—

the Chief Minister's bill—

> states that the right to life 'shall apply to a person from the point of birth'"—

Welcome, Solomon, to the ACT Assembly—

> "The 'from the point of birth' condition is an exclusionary clause that is found nowhere in the ICCPR or in international human rights law.

Well done, Attorney-General; we are going to go it on our own with this one. The press release goes on to say:

> It is an express violation of the Convention on the Rights of the Child, which Australia has signed and ratified—

another convention that we have signed up to and seem to be about to violate—

> The Universal Declaration of Human Rights recognises children's rights to 'special safeguards and care' including 'appropriate legal protection before as well as after birth'.

So much for the human rights crusaders of the Assembly. We are going to exclude the unborn from the protection afforded by at least three international covenants to which this country has signed up to and which form the basis of the reasoning for the Chief Minister's actions in bringing this bill here today. The press release continues:

> Article 4 of the ICCPR stipulates that no government can derogate from the right to life even in times of "public emergency" and Article 50 states that no federal state may put limits on any of the rights contained in the Covenant.

Is this bill about to violate international agreements to which this country had signed up? The press release continues:

> "The human rights of children before as well as after birth have been recognised for 80 years, going back to the Geneva Declaration of 1924. They cannot be taken away by the ACT Government.
>
> "Members of the ACT Legislative Assembly should reject the Bill of Rights if it does not recognise the right to life of our smallest citizens, even up to the point of birth."

We will move amendments later, through Mr Stefaniak, that will remove this clause. If members believe what the Chief Minister has said about the basis of this bill being our compliance with international agreements, they will remove clause 9 (2) because it violates everything that the Chief Minister purports to represent.

Another curious thing about this bill is that it contains no penalties. We do not necessarily need penalties, but we have a human rights bill that does not protect human rights because there is no offence created, there is no cause of action, and the only action that you get is a letter from the court saying, "We think you've got it right. Think about it for six months." The bill is a Clayton's bill. It is a Clayton's bill because of its vagueness. It limits some rights.

It is quite interesting that the Chief Minister, in introducing the bill, said that many of our rights are vague and subject to the political will of the day. The bill does not overcome that hurdle identified by the Chief Minister. There is a clause in the bill that says that the bill does not tell you what all your rights are because we are going to discover them as we go along when we go through the court system.

Mrs Burke raised earlier the concerns that we have had voiced to us privately by many members of the public service. I refer to an article in the *Canberra Times* of 3 February 2004 by Max Spry, which said:

> Further, the consultative committee tasked to examine whether the ACT should have a Bill of Rights reported that it constantly encountered those who were deeply disillusioned by their contact with the ACT bureaucracy. Many of these people, the

> committee said, thought that the administration of laws by government agencies was partial, inconsistent and unfair.
>
> This is a very important observation. Unless we feel confident that ACT public servants act according to the law, there can be no real human rights protection in the ACT. The Human Rights Bill does nothing at all to achieve this. Perhaps human rights in the ACT might be better protected if the Ombudsman, and other like bodies, were strengthened or perhaps if ministerial responsibility was taken seriously.

It is very interesting that Mr Spry's article says:

> We must be very clear about this—the Human Rights Act would not permit the ACT Supreme Court to declare a law that infringes human rights invalid or unenforceable.

So why would you have it? Why would you have the reference to the Supreme Court? It goes on to say:

> But the bill makes it very clear that such a declaration of incompatibility does not in any way affect the validity or operation of the law in question. Even though a law of the Assembly is inconsistent with human rights, it remains a valid, enforceable law.

That is good law, Attorney-General; that makes sense! Let's pass a law that says that you can have incompatible laws! The article goes on to say:

> It would also seem—although the Bill is not exactly clear on this—

perhaps the Attorney-General can clear this up—

> that the Supreme Court will not be able to award compensation to a person whose human rights have been infringed.

I guess you are happy in the knowledge that they have been infringed, there will be no action, the law will not be invalidated and life will continue because we have passed a bill of rights law that is a toothless tiger. *(Further extension of time granted.)* Indeed, Mr Spry went on to say in the last paragraph of the article:

> In short, the Human Rights Bill is to human-rights protection in the ACT what Ern Malley is to Australian literature—a hoax.

Mr Speaker, I want to speak about dissent. It is interesting to note that the bill protects free speech, but what does it say about the right to dissent? You have to ask about what has happened to those who have dared to show their dissent against this government? Let me give a couple of examples.

What happened when the AMA had the temerity to press for concessions on medical indemnity? They were abused by our leader, the Attorney-General. We had a horrible tirade against doctors with Rolls-Royces parked in their driveways. To the best of my knowledge, we proved that one, possibly two, of the doctors had Rolls-Royces. But if you stand up to the Chief Minister you get a barrage of abuse.

What happened when the head of the chamber of commerce had the temerity to represent his members by criticising the economic white paper? He was branded an ideological and political enemy of the government. God bless you for standing up to Jon Stanhope and being an ideological and political enemy of the government. So much for this talk of inclusion, protecting rights and saying to Chris Peters, "I affirm your right to criticise me because you have a right to free speech. In fact, Chris, if you go to the rights section of the act, section 16, you have freedom of expression." Everyone has a right to hold opinions without interference as long as they do not contradict those of Jon Stanhope, because if you contradict those of Jon Stanhope you are an ideological and political enemy of the government.

The Australia Day in the National Capital Committee seemed to earn the wrath of our Chief Minister as well. What happened to them? He cut their funding—zip, nil, nix, nada, zero dollars. He would rather spend it on Welcome Back Cotter, a true Aussie barbecue, but he did not mention that it just happened to be on Australia Day, that it happened to be another picnic in a park that happened to have entertainment, that happened to come the day after the federal government had its little shindig up at Federation Mall. But don't dare cross the Chief Minister because you have section 16, you have freedom of expression!

What about Volunteering ACT, the other group that stood up to the Chief Minister? Their funding was cut to zero. We spent all last year praising volunteers, but we are not going to give them any money. I think it is the height of arrogant posturing from the Chief Minister to say that this bill is to protect the rights of individuals. What will happen to those that dare to oppose Jon Stanhope?

Mr Speaker, I go back to where I started, that is, with the words of Bishop Browning when he talked about protecting individual human beings. The sad thing about what this bill has done in terms of portraying that we were going to end up with a system that so much better protected people is that that is not true. I often think of the words of John Donne, the English metaphysical poet, when he said:

> No man is an island, entire of himself…any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee.

I think the bell tolls for the ACT tonight. I think that it tolls for the city of Canberra and I think that ultimately it tolls for all of Australia, because what we are doing today is we are eroding the rights of the individual and what we are doing today is we are eroding the separation of powers that leave our judiciary independent of our political wing. The bell tolls for the independence of the Assembly, because we have another player who can have a finger in the pie.

The bill erodes the ability of the judiciary to make decisions, because the Attorney-General and the Human Rights Commissioner can enter the court and have their say, and it erodes the confidence that people have in those that they have elected to make decisions on their behalf because we are now subject to another body and its interpretation of the laws that we made. The bell tolls for all of us because this bill does not do what it purports to do.

The bill is Clayton's law, it is bad law, it is law that will erode the very judicial system that the fairness of Australian society is based upon. I urge members not to vote for this bill tonight. If they do wish to vote for it, I would ask that they adjourn doing so to enable the community to become further involved in the discussion, because it is patently clear that through the consultation the bell did not toll in favour of the bill of rights; it tolled against it.

Mrs Dunne: I seek leave to speak again, Mr Deputy Speaker.

Leave not granted.

Suspension of standing and temporary orders

MRS DUNNE (6.23): I move:

> That so much of the standing and temporary orders be suspended as would prevent Mrs Dunne again addressing the Assembly.

I want to address the issue. Mr Deputy Speaker, this is a simple courtesy that is generally extended to people.

Mr Stanhope: We just gave five extensions to your leader. This is ridiculous. We are being courteous beyond endurance.

MRS DUNNE: In a discussion that I had with the Chief Minister just before we rose for lunch, he said that he would be happy, whilst not providing open slather for everyone, to give leave. It is not unprecedented for people to come in here and ask to speak again.

Mr Wood: Who else is going to ask?

MRS DUNNE: Does it matter? This is a debate about human rights, about the rights of people to express their views. Suddenly, when it becomes discomforting for the Chief Minister, what is the government going to do? It is going to apply the gag.

Mr Wood: Who else is going to jump up?

MRS DUNNE: It does not matter. I would tend to give leave, as I do in any case. I do not care whether you want to hear them or not. Sometimes I do not want to hear them, but we afford to people in this place the right to express themselves. Sometimes that is an inconvenience, but that is what democracy is about.

Question put:

> That **Mrs Dunne**'s motion be agreed to.

The Assembly voted—

Ayes 8		Noes 7	
Mrs Burke	Mr Pratt	Mr Berry	Mr Quinlan
Mrs Cross	Mr Smyth	Mr Corbell	Mr Stanhope
Ms Dundas	Mr Stefaniak	Ms Gallagher	Mr Wood
Mrs Dunne	Ms Tucker	Ms MacDonald	

Mr Speaker having declared that the motion had not been carried as an absolute majority of members had not voted in its favour, as required by standing order 272—

Question so resolved in the negative.

Sitting suspended from 6.31 to 8.00 pm.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (8.02), in reply: Mr Speaker, today the Assembly will pass the very first bill of rights legislation in Australia and fulfil the government's election promise to strengthen the legal protection of the rights of everyone in the ACT. It is the product of over two years of consultations in the community and represents the first stage of a legislative scheme that will give effect to fundamental civil and political rights in ACT law.

When I committed the government to this project, we knew it would be controversial and attract passionate debate in the community and from all sides of politics. It is a subject on which emotions run high, and people have made some quite extreme claims in this debate. On the one hand, proponents of a constitutionally entrenched bill of rights would like our Supreme Court to have the power to strike down legislation. On the other hand, there are those who, despite all the evidence, still believe that the common law is the best way to protect fundamental rights.

Some have played on stereotypes of a crime-ridden and litigious American culture or argued that the bill is at the expense of the community rather than in support of it. These claims are baseless and ill informed, and this polarised debate has kept Australia lagging behind the rest of the world. As all members know, we are the only common law country whose citizens do not enjoy a constitutional or statutory bill of rights.

The Canadians are proud of their Charter of Rights and Freedoms. In Europe 41 countries are party to the European Convention on Human Rights and Fundamental Freedoms, covering some 800 million people. New Zealand has a bill of rights; it has had a bill of rights for over 10 years. The United Kingdom, the homeland of the common law, incorporated the European convention—a bill of rights—in 1998. 151 countries are party to the International Covenant on Civil and Political Rights. The principles of the covenant are reflected in most national constitutions, but in Australia it serves only as a guide for the work of the federal Human Rights Commissioner, whose jurisdiction is limited to inquiring into the acts and practices under Commonwealth enactments.

Why is Australia lagging so far behind? Human rights protection is not just a federal matter, and there is no inherent logic that a national approach is the only approach. Human rights protection is as much a state and territory responsibility as it is a matter for the federal government, and we in the ACT are happy to lead the way for Australia on this issue. It is time to move on.

The bill is based on an interpretative model, which has drawn on the recent experience of New Zealand and the UK but is adapted to our local needs. It is a model that represents the third way, one that gives effect to civil and political rights in domestic law but which also recognises the traditional importance of the sovereignty of parliament. Its purpose is to increase public accountability in the public service and strengthen our democracy.

Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs in the UK, spoke recently about the United Kingdom Human Rights Act. He said:

> We didn't bring in the Human Rights Act to get a litigation culture. We brought it in to get a human rights culture.

The ACT bill will promote human rights by making rights more transparent and requiring them to be taken into account in the development and interpretation of the law. It will encourage all Canberrans to see themselves as having rights as well as the responsibility to respect the rights of others.

The bill recognises that human rights inhere in every human being and that, although human rights belong to everyone, they have a special significance for indigenous people. It is appropriate—and the government is very happy—that Professor Larissa Behrendt, director of the National Institute of Indigenous Law, Policy and Practice, was able to participate as a member of the consultative committee and have so much active interest and support from the local indigenous community.

The catalogue of rights set out in part 3 of the bill is closely drawn from the International Covenant on Civil and Political Rights. These are fundamental principles that underpin our system of law and government, which we, as part of the international community, have committed ourselves to.

There is a view that the bill emphasises individuals at the expense of the community. This is an understandable concern, but it is one that misunderstands both the philosophy and the practice of human rights. Rights have never existed in a vacuum. A man alone on a desert island does not need rights because there is no one there to infringe them; nor does he have to think about his responsibility to others.

The concept of rights has emerged over centuries out of the struggle to control abuses of executive power and to define rights and responsibilities—the responsibility not just of government to its people but also of individuals to communities and vice versa. Both the covenant and the bill recognise that rights are shaped in a social context and that there are justified limitations. The test is that those limits must be set down in law and must be reasonable and demonstratively justified in a free and democratic society. It is a standard formulation based on a well-established test used in Europe, Canada and New Zealand.

It is not a device to allow the government, or the legislature, to retreat into majoritorianism; nor would we expect judicial discretion to slide in that direction. Limitations must be read restrictively and be justifiable and proportionate. In this way, the bill provides the framework for a principled way to work out the balance between rights and responsibilities.

I want to say once again, to those who have been disappointed that economic, social and cultural rights have not found a place in this bill, that the government has not abandoned economic, social and cultural rights as a framework for government policy. The question we had to face was: is this the time to give these rights legal effect? We have explained the reasons for this already, but let me reiterate that we will re-examine this issue when the legislation is reviewed. In the meantime, the Social Plan sets out our priorities and is a clear statement of the government's objectives.

At the heart of the scheme is the statutory duty to interpret territory laws by reference to human rights and give preference to a meaning that is consistent with those rights. This is a new rule of statutory construction. It is not just a search for the intention of parliament; it is a direction to search for a meaning that is consistent with human rights insofar as that is possible.

We expect a beneficial interpretation to be given to human rights and that rights will be read into existing and future laws. But the bill does not allow the courts to rewrite legislation against the clear intention of the Assembly or to strike down a statute that contravenes a human right. The task was to craft a formula that reconciles the ordinary rules of statutory construction with the new direction to interpret more consistently with human rights.

Much has been said about this new rule: it is too wide and will result in the rewriting of legislation, or it is too weak and the judiciary will avoid declaring a law as inconsistent. Clause 30 is central to the success of the legislation. To ensure that the bill gives effect to the intended policy I will move an amendment to subclauses 30 (1) and (2) this evening to clarify and simplify the wording.

If it is not possible to construe the law in a way that is consistent with human rights, the Supreme Court will have the discretion to issue a declaration of incompatibility. This is a measure of last resort available when it is not possible to give a meaning that is consistent with human rights. The Scrutiny of Bills Committee has speculated that conferring this power in the Supreme Court may be constitutionally invalid. The committee suggests that it amounts to a conferral of a non-judicial power, which is incompatible with the exercise of territory and federal judicial power. Statutory interpretation is surely quintessentially an exercise of judicial power. That is what the courts are for—the power to issue a declaration or make a judicial finding of law more visible to the Assembly and the public.

The Court of Appeal in New Zealand has recognised that declaring the compatibility of legislation is inevitable where a conclusion must be reached on whether legislation is consistent with their bill of rights. In other words, the power to issue a declaration is incidental to the judicial function of statutory interpretation. In fact, in 2001 the New Zealand government formalised the procedure for declarations of incompatibility under its Human Rights Act, which deals with discrimination. The United Kingdom model also provides for declarations of incompatibility.

What the ACT Human Rights Bill does not do at this stage is provide a direct right of action in the Supreme Court. Rather, the bill will make available, in litigation that is

already under way based on other causes of action, additional arguments about the interpretation of the law and human rights guarantees.

The Human Rights Bill will give rise to actions based on human rights grounds that did not previously exist. For example, a challenge could be brought, under the Administrative Decisions (Judicial Review) Act 1989, to an administrative decision, subject to review under the act. The question will be: was the action or decision lawful and consistent with human rights? Failure to interpret the law by reference to human rights may result in an error of law, be otherwise contrary to law or be a failure to take account of a relevant consideration. In addition to its power to grant remedies under section 17 of the Administrative Decisions (Judicial Review) Act 1989, the Supreme Court could also grant a declaration of incompatibility.

The Administrative Appeals Tribunal can review the merits of a decision and, if the decision was based on an incorrect interpretation of the law, the tribunal can remake the decision. The bill also provides for prelegislative scrutiny by requiring that I, as Attorney-General, must scrutinise legislation and form an opinion on whether government bills comply with the bill. Although the Attorney-General must form an opinion on each bill, the ultimate policy responsibility remains with the relevant minister.

Each department will be responsible for ensuring that human rights legislation is taken into account early in the development of new laws. My department is working to develop scrutiny guidelines for the human rights legislation and other important areas of constitutional and public law to assist all departments with this task.

Before closing, I will say a few words about implementation. The legislation is not just about enforcing rights in the courts and strengthening Assembly procedures; it is about cultural change in the public service and the wider community, and that will take time. I expect the public service to do more than tick off against the list of human rights when making a decision. This is about understanding the human rights framework and integrating a rights perspective into decision making and policy development in a clearly defined way. Each department will take responsibility for reviewing its legislation and policies to ensure that they are in compliance with the act. That process began during our consideration of the consultative committee's recommendations.

The Department of Justice and Community Safety is making arrangements for an education program for public officials and will establish a departmental website to house information about the act for the general public and the staff of government departments. My officers are also liasing with the National Judicial College on the conduct of judicial seminars. The Human Rights Commissioner will be responsible for community education. I hope to make an announcement about that appointment in the near future.

Monitoring and evaluation is important to the long-term success of any project. As part of that process the government is supporting an application by Professor Charlesworth to the Australian Research Council for a three-year project to monitor the implementation and impact of the legislation. We hope that project will provide valuable information for our own review of the legislation.

The next few years will be an important settling-in period for the act, as public officials, practitioners and the courts develop expertise in applying the new law. After three years, the United Kingdom government is finding that litigation has not been the most important impact of the act; rather it has been the internal changes to government processes and the wider community understanding and public service understanding of human rights that it has created.

I am confident that, by taking this step-by-step approach, we can, over time, reap the benefits of a system in which democracy and the rule of law are strengthened and in which human rights are actively debated and protected. I commend this bill to the Assembly.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 9		Noes 6	
Mr Berry	Mr Quinlan	Mrs Burke	Mr Stefaniak
Mr Corbell	Mr Stanhope	Mrs Cross	
Ms Dundas	Ms Tucker	Mrs Dunne	
Ms Gallagher	Mr Wood	Mr Pratt	
Ms MacDonald		Mr Smyth	

Question resolved in the affirmative.

Detail stage

Clause 1 agreed to.

Clause 2 agreed to.

Clause 3 agreed to.

Clause 4 agreed to.

Clause 5.

MS DUNDAS (8.20): I move amendment No 1 circulated in my name *[see schedule 1 at page 596]*.

I will speak now to amendments 1, 2, and 3 circulated in my name in the interest of moving time forward. They are all related so, if one gets up, hopefully all of them will get up and, if one is not successful, there will be no need to waste the Assembly's time by moving them all.

MR SPEAKER: Order, Ms Dundas! Are you going to speak to all of the amendments together but move them separately?

MS DUNDAS: Yes, they are to different clauses, Mr Speaker, and they insert different sections, but they are consequential.

MR SPEAKER: Right.

MS DUNDAS: I will present my case now and see how we go. The amendments that I present now do three things. They incorporate the human rights contained in the International Covenant on Economic, Social, and Cultural Rights; they require the Supreme Court to notify the Commissioner for Human Rights if it intends to issue a declaration of incompatibility; and, to speak to my first three amendments specifically, these clauses incorporate rights from the Covenant on Economic, Social, and Cultural Rights.

When the government adopted the report of the bill of rights committee it only adopted some of the recommendations of that committee. It chose to exclude rights contained in the International Covenant on Economic, Social, and Cultural Rights, which leaves the bill with an incomplete and ultimately almost ineffective subset of rights.

The government response to the consultative committee report was to accept the view that all categories of human rights are universal, independent, interrelated and indivisible. The amendments that I put forward are consistent with that view. If these amendments were supported, the right to life would be supported by the right to good health and freedom from hunger, and the right to take part in public life would be supported by the right to education.

The Vienna Declaration on Human Rights states:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

It is disappointing that this declaration has been ignored in the development of this Human Rights Bill. The move by the government to water down the protection of human rights in the ACT is unfortunate. It appears that we have a government that is willing to split human rights into two categories: one that is to be protected in this bill and one that is not. We have in some sense divided human rights. The amendments that I move tonight bring those human rights back to the same level.

I commend the government for the extensive work it has done in the preparation of this bill, but we cannot remove the essential recognition of some human rights in the ACT for political or economic convenience. True recognition of human rights does not place them as subordinate to government finances or split them into those that are compulsory and those that are optional. I hope the government has reconsidered its position on these amendments. I am happy to support them being included today so that we do not end up with what some will perceive as a watered-down human rights act.

It is important that we include the civil and political rights as laid down by the international covenant, which talks about the right to freedom from hunger, the right to

an adequate standard of living, the right to take part in cultural life, the right to education, the right to work and the right to self-determination. We can all agree that these are fundamental principles and should be included in the Human Rights Bill.

MS TUCKER (8.25): I did speak at length in the in-principle debate to the Greens' thoughts on the value of having the economic, social and cultural rights included in this, so I won't speak again to them. I will just say that the Universal Declaration of Human Rights of 1948 includes both the civil and political rights and the economic, social and cultural rights. Other international statements have noted the indivisibility of the two sets of rights. More than that, these rights get at fundamental aspects of everyday life, which is of great importance, particularly for people who are excluded. I support the amendment.

MR STEFANIAK (8.25): The opposition will be opposing Ms Dundas's amendments. Firstly, we think that these amendments would be financially disastrous for the Australian Capital Territory; they would probably bankrupt us within three years, instead of 10 years if we just keep this bill as it is—and some of the other policies of the government.

Ms Dundas, even countries that have bills of rights do not have in them economic, social and cultural rights—especially economic rights—such as those you are seeking to put in. The United Kingdom recently introduced its Human Rights Act—which came into effect in 2000—upon which a lot of this bill is based. That country strenuously avoided the problems other democratic countries had with bills of rights by putting in all the necessary checks and balances to ensure the legitimacy of parliament and to avoid the bad consequences of having economic rights in the bill of rights.

Even the United Kingdom are now finding some of the judges going off on a few tangents that the parliament did not expect, even in terms of that watered-down Human Rights Act. Even they are starting to see problems. But having gone down the path—unnecessarily in my view—of the Human Rights Act, at least they did not have economic, cultural and social rights. Spain avoided that mistake as well, Ms Dundas, and there are also other countries that do not have these rights. It would be open slather if these rights were in this bill.

The consultative committee recommended some economic, social and cultural rights in its report, including the right to the highest quality health care. We are having enough trouble with our health system at present without having a completely unrealistic and unobtainable economic, social and cultural right put in. That would mean that everyone would have to have brilliant and immediate surgery. I do not think the territory budget could possibly afford that. Even if we did not spend money on anything else, we would be unable to afford that.

We have huge problems with this bill as it is, but if these rights were brought in, we would bankrupt the territory in two to three years. It is completely unrealistic. It is pie in the sky stuff. Thank God for small mercies that the government is not proposing to go down this path—although, rather ominously, there will be reviews of this act and the Chief Minister has flagged that he might look at these issues in the near future. God help the territory if that happens; it is something we clearly do not need.

These rights are lovely if you can obtain them, Ms Dundas. So are the yellow brick road and fairyland, but they do not work in practice. A lot of countries that have more recently gone down the—in some instances unnecessary—path of a human rights act at least had the sense not to go as far as you propose to, with amendments such as these.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (8.29): The government won't support these proposals of Ms Dundas, a decision the government has made with some regret. I am aware of the support of the consultative committee for the inclusion within the Human Rights Act of the rights that are contained in the International Covenant on Economic, Social and Cultural Rights. As you will be aware from our response, in the context of the Social Plan we have committed the ACT government to incorporating those rights through that particular non-legislative commitment to economic, social and cultural rights.

I remain very much alive to the desirability at a later date of incorporating economic, social and cultural rights into the Human Rights Act. I see that as one of the building blocks that we may in time choose to incorporate. I have taken the attitude in relation to this bill that we need to establish a rights regime, we need to take this first step, we need to establish our mechanisms and we need to institute the necessary education, training and change within government—certainly within decision making—in relation to the range of rights that are set out in the International Covenant on Civil and Political Rights before we take the next step of incorporating economic, social and cultural rights into ACT law.

We need to do some additional work on the potential resource implications for the territory of incorporating into the legislation that further raft of rights. It potentially provides exciting future possibilities for us as a jurisdiction. I am more than happy to commit a second Labor government to a consideration of the implications of proceeding to incorporate some of those rights into the law of the ACT.

In response to some of the comments of the shadow Attorney, it is relevant that we acknowledge that South Africa has incorporated the International Covenant on Economic, Social and Cultural Rights into its bill of rights. That is constitutionally entrenched. Of course, there are significant social and economic differences between South Africa and the ACT, and I think those differences need to be taken into account.

It is not appropriate that we look at the extent of the judicial interpretation by the South African courts of the economic, social and cultural rights in that nation, but some interesting judgments, decisions and interpretations are now being developed internationally, perhaps most significantly through the Supreme Court of Appeal of South Africa. They give us some guidance but, because of the significant differences, essentially economic, that exist and the differences that are so stark between life in South Africa and life in the ACT, we have to look with some caution at that precedent and at some of those judgments that are being established in South Africa.

A nation to which we might appropriately compare ourselves is the United Kingdom—as I mentioned before—the mother of the common law, which in its wisdom has acknowledged that the common law no longer deals adequately or appropriately with human rights. This point needs to be made in the context of the slavish commitment to

the common law as a bulwark against threats to our human rights, which the Liberal Party is so wedded to. Not even the United Kingdom—the generator of the common law, the home of the common law, the nation that gave birth to the common law—accepts any longer that the common law is an adequate protector of the human rights of its citizens.

It is an interesting extension to make that the United Kingdom, which is still home to colleagues on the opposition bench, no longer accepts that the common law of itself is adequate. It has legislated, through its adoption of the European convention, a bill of rights of its own through its Human Rights Act, which acknowledges a right in relation to education. This right is negatively expressed but is nevertheless incorporated within the United Kingdom Human Rights Act. I think it is the right not to be refused access to education, and it is one of the rights Ms Dundas would seek to introduce, in a more positive formulation, through these amendments.

We need to be mindful, if we are serious about this debate, of the United Kingdom introducing into their bill of rights that one social right: the right not to be refused access to education. It is not true, as Mr Stefaniak would lead us to believe, that nations we choose to compare ourselves to have not begun to incorporate into their domestic law a range of social rights: in the case of the United Kingdom, a right to education; and in the case of South Africa, the full range of economic, social and cultural rights.

In relation to what Ms Dundas and, I know, Ms Tucker are seeking to achieve in this significant piece of legislation by expanding it in this way, the government will not support the incorporation of that convention into the Human Rights Act at this time. But I have a very open mind on the question, and I look forward very much to continuing to work with Ms Tucker and Ms Dundas to achieve, over time, the incorporation of a fuller range of rights into the Human Rights Act.

MS DUNDAS (8.37): I take some heart from the Chief Minister and Attorney-General's comments that the inclusion of the International Covenant on Economic, Social and Cultural Rights is something he is not willing to see in the legislation "at this time" because that indicates it is something he is willing to look at in the future. However, considering the amount of time we have had to consider a bill of rights, or a Human Rights Act, for the ACT, it is disappointing that the main impediment to including these rights at this stage is economic costing. The time would have been available to work through that, and tonight we could have seen the ACT accept a much fuller and more even-handed piece of human rights legislation.

Amendment negatived.

Clause 5 agreed to.

Clause 6 agreed to.

Clause 7.

MR STEFANIAK (8.38): Whilst it is obvious that the opposition will oppose the whole bill, this particular clause indicates that the act is "not exhaustive of the rights an individual may have under domestic or international law". It gives examples of other rights—for example, rights under the Discrimination Act 1991, or another territory law.

This shows the unnecessary and contradictory nature of the bill the Chief Minister is going to have passed tonight, which clearly states that it is not exhaustive of the rights an individual might have.

I thought the whole purpose of this was to encapsulate all these rights in one bill, yet this clause is contrary to the rationale the Chief Minister would have us believe is behind the bill—the need that he states for this bill. This indicates that there is no need for this bill; it says in black and white that this act is not exhaustive. Individuals have other rights. They have other rights under domestic and international law. It actually quotes from one of the main acts where the rights of individuals are listed and where quite regularly they are upgraded.

This Assembly has done that in relation to discrimination against gays and lesbians, same-sex couples, women who are pregnant who might not get a job and women who want to have a baby in the future who might be precluded from entering the workforce. There are a couple of recent examples in this Assembly of where we have amended the Discrimination Act to add to and improve on it. Some might not agree that they improve on it, but they are law now.

"Anti-discrimination", "rights of persons"—this is a very contradictory clause. What says it all is that the real justification for this act—that it puts rights into one act—clearly is not the case and can never realistically be the case. I go back to our original premise: why on earth do we need this act? It is not just the common law that we rely on; it is convention and statute law, as this clause specifically states. There are statutes that deal with rights, over and above this act. This clause helps show what a nonsense this whole exercise is.

Clause 7 agreed to.

Clause 8.

MRS DUNNE (8.42): Clause 8 purports to prohibit not inappropriate discrimination, not discrimination on irrelevant grounds—but all discrimination. It purports to eliminate the act of making a choice. Everyone has the right to equal and effective protection against discrimination, and the crucial words are "on any ground". The equal and equivalent wording seems to me that we "do not discriminate in our protection from discrimination". It is an interesting philosophical tangle, and it could perhaps be termed the "Bertrand Russell provision".

If we took this seriously—which no one would, because most of this bill is nugatory anyway—it would prohibit not only schools of a particular orientation, like a Catholic school hiring Catholics, or females from seeking female flatmates; it would also prohibit hiring a waitress with experience or a commissioner for revenue with qualifications. In fact, there would be no restriction to employment, public statements—nor any choice. We are not permitted to choose the attractive bride over the unattractive one or the appealing dinner guest over the guy who picks his teeth with a fork. We can make choices, as long as they are entirely random.

We already have a range of federal and ACT antidiscrimination legislation with exceptions and qualifications, which reflects the fact that it has teeth and that it is

engaged with reality. This clause is not engaged with reality. The absurdly sweeping statements in this provision make it clear that it has nothing to do with reality. It is a symbolic provision; someone decided we needed a futile gesture. The danger is that someone else will make a mistake and take it for reality. It should be opposed.

MR STEFANIAK (8.44): I concur with what Mrs Dunne said, especially in relation to subclause 8 (3). Subclause (3) is an interesting one because it says:

> Everyone is equal before the law and is entitled to the equal protection of the law without discrimination—

And as far as that goes it may be okay, but then it says:

> In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Looking at this clause, which fundamentally makes sure that everyone has recognition and equality before the law, it is somewhat inconsistent with another part of the bill, the preamble. Paragraph 7 of the preamble states:

> Although human rights belong to all individuals, they have special significance for Indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

Does that mean that indigenous people in Australia are going to be treated differently, and is that contradictory to clause 8, where everyone is meant to be equal? I find that preamble quite patronising, as I am sure a lot of indigenous people would. That seems to be somewhat contradictory to clause 8. It is another problem, over and above the very valid points that Mrs Dunne makes. There are real problems with this clause, and the government should redraft it. Mrs Dunne is right to suggest that it should be opposed.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (8.46): I will just make the point but will not labour it because I know it will get me nowhere, that much of the comment in the presentations from members of the opposition today simply misunderstands the operation of the act and the provisions in the legislation. The comment from the two members just now proceeds in complete ignorance of the effect and impact of this legislation and the way it will be interpreted by our courts, in complete ignorance of the bases on which the International Covenant on Civil and Political Rights would be interpreted and in total ignorance of the bases on which the rules of international law are interpreted and applied. They are interpreted and applied on the basis of comparisons that would be made or of decisions that would be made on objective and rational grounds. I am not going to keep saying it in response to comments that are made, but I need to say it once for the record. The law is not an ass, despite what you seek to make of it tonight. The rules of international law are interpreted on the bases of some objectivity and some rationality, and on the basis of decisions that are made for legitimate purposes. The examples that have been propounded just now are absolute nonsense. They're an insult to the intelligence not just of this Assembly but of the Canberra community.

Clause 8 agreed to.

Clause 9.

MR STEFANIAK (8.48): I move amendment No 1 circulated in my name *[see schedule 2 at page 603]*. This amendment will delete clause 9 (2). I don't think anyone would have any problems with clause 9 (1), everyone has the right to life, and, in particular, no-one may be arbitrarily deprived of life. But I think a lot of people would have a problem with subclause (2), which states, "This section applies to a person from the time of birth." I think a lot of people would have a problem with that. This is an interesting subclause. I think it's in there because some people on the other side are really quite comfortable with this concept. A lot of people in our community are not. Maybe it relates to issues around abortion. I think there are greater issues than that. First, a lot of people in our community are very concerned about abortion, and to have the right to life from the time of birth creates some very, very real problems.

There would be people in our community quite prepared to accept the right to abortion but who would have a huge problem with this. They would recognise that if a woman was seven or eight months pregnant the child would be virtually fully formed. Even when one talks about abortion there is an ideal period in which an abortion can be performed and after which period of time it is basically just not on. This is an amazing subclause that has been put in here and it really does jump out at you. Hence my amendment to have subclause 9 (2) omitted. Mary Joseph put out a press release from the Right to Life Association, some of which I think has been mentioned earlier by my colleague Mr Smyth. I think it is appropriate to read this into the record. It is headed, "Bill of rights puts limits on the right to life. ACT will violate international human rights law". The guts of the release states:

> Human rights will be taken away from our smaller citizens if the ACT Government's Human Rights Bill 2003 is passed, president of the ACT Right to Life Association, Mary Joseph, said today.
>
> The ACT's proposed bill of rights was introduced into the ACT Legislative Assembly in November last year. It's a Human Rights Bill 2003 by the Stanhope Government. The Government claims the bill is based on the International Covenant of Civil and Political Rights, but it violates article 6 of the covenant which protects the right to life without any qualification or limitation whatsoever. This bill states that the right to life shall apply to a person from the point of birth, Ms Joseph said.
>
> The 'from the point of birth' condition is an exclusionary clause that is found nowhere in the International Covenant of Civil and Political Rights or in international human rights law. It is an express violation of the convention on the rights of the child which Australia has signed and ratified. The universal declaration of human rights recognises children's rights to special safeguards and care including appropriate legal protection before as well as after birth.
>
> Article 4 of the ICCPR stipulates that no government can derogate from the right to life even in times of public emergency. Article 50 states that no federal or state government may put limits on any of the rights contained in the covenant.
>
> The human rights of children before as well as after birth have been recognised for 80 years going back to the Geneva declaration of 1924. They cannot be taken

> away by the ACT Government. Members of the ACT Legislative Assembly should reject the bill of rights if it does not recognise the right to life of our smaller citizens even up to the point of birth.

The release was issued on 2 March 2004 by Mary Joseph, President of the ACT Right to Life Association. She makes some very valid points, valid allegations that this violates international conventions Australia has signed. Why is this particular subclause here? Would it really take away from the intent of this bill if there was not a subclause (2) and if this clause simply read, "Everyone has the right to life. In particular no one may be arbitrarily deprived of life"? If you are going to have to have a bill of rights, and the right to life is a pretty fundamental right, why not just have that? Why arbitrarily, and it would seem quite incorrectly, stipulate life begins from the time of birth? There is all manner of medical evidence in relation to a nine-month pregnancy. Many babies are born prematurely, and that goes to show that at seven or eight months you have a fully formed human being there.

This is incredibly arbitrary. I think it is very wrong. I'm amazed it has been put in there. Quite clearly it is something that we in the Opposition will be opposing most strenuously. If the Chief Minister wants to make it into a question of a pro or anti abortion, there's more to it than that. Yes, I'm certainly anti-abortion, but there is a lot more to it than that. I would think many people who are quite pro-abortion, and quite comfortable with laws passed by this little parliament back in 2002, would be appalled at that particular subclause. It is something that this Assembly should reject out of hand by supporting the amendment I have moved.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (8.54): The government won't be accepting the amendment. My advice from departmental officials is that the claims made in the Right to Life Association press release are simply wrong as a matter of law. There is no internationally recognised right of a child before birth. My advice is that those claims are simply not factual. I think it's important that I provide you that advice from my officials that the claims in the press release are not correct. They're not substantiated by any interpretation of the conventions that have been quoted. Anybody who has read around the development of those conventions is aware that issues around the right to life were very much part and parcel of the drafting of this particular provision in the convention. Members know as well as I know, without having to go to any great research on it, that one of the most vexed questions facing even this jurisdiction let alone the national government of Australia and the national governments of every country around the world and, indeed, the United Nations is the issue around commencement of life and the status of a foetus or an unborn child.

Members know as well as I know that the United Nations in drafting those conventions did not come to a conclusion on that issue. They never could and they never will and that's why the issue was left as it was, to be dealt with by national and local jurisdictions. This jurisdiction dealt with the issue in 2002 in the decision it took to decriminalise abortion. The government, in subsection 9 (2), is essentially recognising a decision taken by this legislature two years ago to decriminalise abortion. Subsection 9 (2) was included in the Human Rights Act to recognise the decision that we had taken to decriminalise abortion.

Mr Stefaniak: You don't have abortions at seven or eight months.

MR STANHOPE: Well, we're opening up the debate now. All of a sudden the opposition needs to specify a date or a term or a time. It's a debate without end, it's a debate without answer. In the Human Rights Act the government chose to ignore the debate and acknowledge that as an Assembly we decided to decriminalise abortion. I know you don't like it and would prefer it otherwise but the decision's been taken. It's important, to me and to this community, that we not cloud or confuse the development of a bill of rights or a human rights act with an argument about the commencement of life or the right to a termination or abortion by including in the Human Rights Act a provision that would open up a debate that divides the community. We all know it does, but as a legislature we have made the decision on this issue. We decriminalised abortion, and it was our intention to avoid debating it again in this instance. I repeat that the advice available to me from my departmental advisers is that the claims made by the Right to Life Association in its release today about the interpretation of the conventions quoted are legally incorrect.

MR PRATT (8.59): The Chief Minister's position on this issue is an assertion which is well-matched by advice to the contrary. There's a lot of advice and debate about these questions. The Chief Minister's position is not backed up by irrefutable evidence. Can the Chief Minister imagine how a woman feels when her unborn dies? Look at the Byron Shields case in New South Wales in 2002. Did Mrs Shields, who lost her seven-month-old unborn in Sydney due to reckless driving, not feel that she had lost a life? Did she not feel that? We believe it is fundamental that clause 9 be amended to reflect that life begins before birth. We seek to remove subclause 9 (2). The question of when life actually begins is disputed—is it three months or is it six months—but it is generally believed that life begins before birth and that position is gaining growing acceptance among many in the community. All the evidence points to the fact that a woman seven to eight months pregnant has a fully-formed child in the womb. Many people in the community will be very concerned about this provision in this bill of rights as well as being very concerned about the bill of rights. The community will abhor what they see to be an attempt to fix the provisions in this bill to pursue an ideological position on abortion. Apart from the issue of abortion, many in the community will feel that the unborn child should be protected and that an assailant who assaults a pregnant woman and injures or kills the unborn should be charged and held accountable. Clause 9 (2) needs to be cancelled. We feel so strongly about this that we will be continuing with the debate on the bill to seek to protect the unborn.

MS DUNDAS (9.01): We won't be supporting the amendment moved by Mr Stefaniak. It's important to refer back to the international covenants from which the right to life is taken, and comments made by the UN about the right to life. It is observed that the right to life enunciated in article 6 of the covenant has been dealt with many times before. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation. However the committee—the UN committee covering these rights—has noted that quite often the information given concerning article 6 is limited to only one or other aspect of this right. It is a right that should not be interpreted narrowly, and I fear that this debate is heading down that path. The committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every

year. Under the charter of the United Nations the threat or use of force by any state against another state except in exercise of the inherent right of self-defence is already prohibited. The committee considers that states have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war and to strengthen international peace and security constitute the most important condition and guarantee the safeguarding of the right to life.

In this debate we are starting to take a very narrow view of what we mean by the right to life and when that takes place. There was a lot of debate about when life begins when we debated the right of women to access an abortion in this Territory. Mr Pratt has spoken about a women seven months pregnant. Is he insinuating that at six months that child isn't alive, or five months, four months, three months, the time of the first visit to the doctor? How far back are we going to go? Everybody has the right to protect their possibility to have more life. I don't think that that debate is helpful when we are looking at civil and political rights as we are today.

When I first saw the report come down from the consultative committee I too was interested in this clause about the right to life and what it meant for the ACT—especially as we have just gone through a quite extensive debate in relation to abortion. I took time to meet with the people on the consultative committee to work through those concerns. They informed me at the time that the right to life as expressed in the international covenant is something that right to life groups around the world have deplored because it doesn't help their cause to end abortions. It doesn't support their aims at all. It supports, and is meant to support, the broader concept of people to be free from harm, from conflict, from another country dropping bombs on their head, which is the main thrust of what is discussed in international covenants.

I am disappointed that we've started to skate around the abortion debate again. I thought that issue was settled for the term of this Assembly at least. I can understand where the Attorney-General is coming from in adding subclause (2) to say that the bill applies to a person from the time of birth. It has been agreed, not only by this Assembly but by many courts, that independent life begins when the first breath is taken.

Mr Stanhope: It's consistent with the common law.

MS DUNDAS: Yes, as the Attorney-General has said, it is consistent with common law. That is all we are reflecting in this part of the legislation. So I guess I'm disappointed that debate has gone down this path. It was something that I was concerned about so I took time to talk to the consultative committee and hear its views. It's disappointing that despite words from those in the know, the debate has gone the way it has this evening. Subclause 9 (2) is needed in this legislation to make it clear, to put forward that common law principle. I hope the Assembly sees it fit to leave in.

MRS DUNNE (9.07): I support Mr Stefaniak's amendment. Almost every Assembly since self-government has had a lengthy debate on the availability of abortion in the ACT. So, one would think the question of when life begins would have been thoroughly canvassed. If we look at the Hansards of those debates spreading back through the years we can see that everyone who expressed a view on when life began argued that life began sometime before birth, usually at conception. It doesn't mean that everyone is

agreed and it would be a capricious omission that anyone who argued for the liberalisation of abortion did so exclusively on the rights of the mothers. They said nothing about when life began or whether the unborn were human or, if not, what else they may have been.

One of the things that stood out in those debates was that the ALP and other parties allowed a conscience vote on this issue, and some members have always had the opportunity of availing themselves of conscience votes. This time this is not the case. You can have a conscience vote on a private members bill about abortion but when the question of the beginning of life comes along it doesn't matter what members on the other side think, they may not exercise their conscience. They may not exercise their conscience in the debate about human rights. Judging from a range of previous statements, some members of the government don't believe the proposition stated here, that people's right to life begins at birth. Yet they are being pressured to vote for it and, I suppose, threatened with sanctions if they vote against it. This legislation is not about the substantive issue, and therefore government members have no conscience vote. The Stanhope view of human rights evidently doesn't extend to his parliamentary colleagues. The ALP knows when life begins. It seems that the Democrats know when life begins, and they are all bound to this view even though their members may privately disagree.

We are offered no basis, no argument in support of this statement. We have had blandishments. All the time from the Chief Minister we have assertions. He says that it's simply wrong or, previously, that it was simply ignorant, but there's never a demonstration as to why his assertion is any better than anybody else's except that his is usually more insulting than anybody else's. Others around here can put forward an argument and his response to that is to say, you're wrong or you're ignorant. It doesn't work like that. There is no scientific justification for this provision applying to a person only from the time of birth. There is no scientific justification for the claim that this genetically-distinct creature, this unborn homosapien, is something other than a human. This arbitrary qualification on the beginning of life, this most important right in this bill, or in existence, does not proceed from any scientific evidence.

The logic works like this. We've had a debate about abortion—women must have a right to abortion because they have a right to choose, and if the unborn child has rights that might interfere with the right to abortion, and therefore the unborn child has no rights. Therefore the unborn child is not human and has no human rights. Thus we are arguing from no scientific basis and from no profound theory of human rights. We are arguing backwards from a slogan. So, we have a position that no-one has argued in the debate when it was directly at issue, a position with no scientific or philosophical underpinning visible to the naked eye. It's being imposed as an absolute view of the government, when individual members of the government disagree with it, and it will flow through to all other legislation.

Perhaps this isn't the intent. Maybe I've got it all wrong. After all, the legislation does not specifically say that life begins at birth. There is an alternative interpretation, and this is how it goes. Everyone has a right to life, that right is innate, coming from wherever we, the Labor government, thinks that rights come from. But for those of you who have not been born, we will simply not allow you to exercise those rights. Perhaps that's an example of what this bill means when it says rights may be subject to reasonable limits. It raises the really interesting question of what are the reasonable limits? But I think it's

even worse than that—the idea, as we have said in other places, that you can stand up and declare the most fundamental human rights and in the next breath you take it away.

This is what the Chief Minister does here. Everyone has a right to life, in particular no-one may arbitrarily be deprived of life. "Arbitrarily" is an interesting word there. Then the next clause arbitrarily takes that right away from anyone who hasn't had the fortune to be born. Perhaps this qualification is not intended to mean that unborn children lose the right to life, but rather the government doesn't care whether they have it or not, and they are simply excluded from consideration. Does that scare you, Mr Speaker? I know it scares me, and I know it scares a whole lot of other people. Who will be the next to be excluded from their rights? We can only wonder.

My own views on the beginning of life accord with all of those members who have expressed a view on the matter during a lot of debates in this place. Life begins at conception, and I think that the right to life is the most fundamental human right and cannot be unilaterally abrogated by governments, even this one. I'm not seeking to amend this bill to impose this view. I think a human rights bill, if we must have one, should enshrine principles which are broadly agreed in the community. It is clear in this area that there is no community consensus, and thus the legislation in this area should be considered on its own merits and not be pre-empted. Ms Dundas made the point that we don't want to narrow the interpretation, but clause 9 (2) does just that. If a clause said everyone has the right to life, that would be broad, but by imposing clause 9 (2) we actually limit it; we do what Ms Dundas says we don't want to do.

If we want to decide matters affecting the rights of the unborn, as we have done on numerous occasions in this place, let us have the debate at the substantive level. The Chief Minister contends that we have done it and that's the end of it, but having a debate about whether someone has access to abortion or whether one should be charged for a criminal offence by accessing abortion does not take away the fundamental issue. It might be uncomfortable for members here, but the fundamental issue about when life begins was not legislated away on that day, or on any of the occasions that we have debated abortion in this place. No-one can put their hand on their heart and say they have never felt the pregnant belly of a woman and say that is not a life. It might be inconvenient, but it is a life, and it begins long before birth.

MS TUCKER (9.15): I will speak briefly on this matter. I refer members to part 2 of the Crimes Act "Offences against the person"—this is not introducing something new. Paragraph 10 is headed "When child born alive" and states:

> For this part, a child shall be taken to have been born alive if he or she has breathed and has been wholly born, whether or not he or she has had an independent circulation.

Under Australian law a foetus in utero cannot be the victim of any kind of homicide, regardless of the stage of pregnancy at which it is killed. A foetus can only be the victim of murder or manslaughter if it is born in a living state. Also, just on the question of international conventions and the rights discussion, which is what this debate is about, in signing the International Covenant on Civil and Political Rights, Australia undertook to respect and ensure that all individuals in Australia have all the rights of the ICCPR (Article 2). The ICCPR contains some key provisions which are denied to women

through laws restricting termination of pregnancy. These provisions are freedom of thought, conscience and religion; physical security and bodily integrity; and privacy.

Article 18 of the International Covenant on Civil and Political Rights ensures our right to freedom of thought, conscience and religion. Laws criminalising pregnancy termination remove women's rights to control their own bodies and lives by imposing one particular religious and moral view on all. As such these laws intrude on personal liberty and privacy in pursuit of moral and religious aims.

MR SMYTH (Leader of the Opposition) (9.17): This is a very important and fundamental matter that we are discussing here. I hope members will listen to what I have to say rather than to the assertion of the Chief Minister that it is just not so. Firstly, Ms Dundas, questioned how far we go back—six months, five months, four months, three months or two months? If you don't know when life begins—we often adopt a precautionary principle in this place—then you should not adopt the section at all. Nobody in this place can stand up and tell me exactly where life begins. In all the abortion debates that we have had in this place, I have asked that question several times. It would make my life really easy if somebody could give me the certainty and the proof that life begins when the child is born. Fantastic—that would be the end of all the argument about abortion. But nobody has ever been able to, and I don't believe that anybody ever can. The Warnock report, which was done in England some years ago, covered when you should be able to use stem cells and at which stage an individual life exists in the foetus. The conclusion was probably after 14 days—up to the 14-day point. There were some circumstances that would preclude bestowing the status of an individual life on the embryo as it was developing. So another version is 14 days. The interesting thing is that we have not agreed to it.

The International Covenant on Civil and Political Rights is mentioned as the basis of part III. If you go to the schedule at the rear of the act, clause 9 (1), "The right to life", is reflected in clause 6.1 in the International Covenant for Civil and Political Rights. If you go to article 6 and you read paragraph 1, you will find that it is very similar to 9 (1) in Mr Stanhope's act:

> Every human being has the inherent right to life. This right shall be protected by law. No-one shall be arbitrarily deprived of his life.

The interesting thing is that section 2 in this act is not replicated in the International Covenant on Civil and Political Rights, so we do take it a step further. In reading through the six parts of the general comments on its implementation, it is interesting that, when you get to section 5, most of this section is about the death penalty, not about abortion or the termination of an early life. Section 5 says:

> Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

So if you are not pregnant and you are a woman you can be executed, although the general thrust of the whole article is that nobody should be executed, which I think most people here would agree with. This section says that death sentences shall not be carried out on pregnant women. The intent of this act is that the unborn are seen as a separate entity in their own right. That is why you would not execute a pregnant women as

opposed to a women who is not pregnant and therefore not carrying a child. We are extending the whole argument by a step, and we don't have to.

If somebody wants to stand up and point out to me exactly where we get this notion that life begins only at birth, I am happy to have that argument. What you are looking at in the International Covenant on Civil and Political Rights is that the pregnancy, the foetus, the embryo—whatever—is something special and seems to be accorded, in any interpretation of article 6, some special rights.

This is contrary to what the Chief Minister asserts. He is very good at asserting but he never backs it up, which is unfortunate. Another interesting thing is the Declaration of the Rights of the Child, proclaimed by the General Assembly resolution of 20 November 1959. I think it is worth reading. I will read it here for the benefit of all those who are dismissive of international covenants or say that that is not what the initial covenants say. For those who are dismissive of the press release put out by the Right to Life Association, let me read the entire Declaration of Rights of the Child. It is not very long. It states:

> Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote the social progress and better standards of life in larger freedom,
>
> Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,
>
> Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

If we pass clause 9 (2) tonight, we will be in contradiction of the declaration of the rights of the child. I don't know whether the Attorney-General takes international resolutions of this nature seriously. What he does is lead us to a contradiction and a contravention of the Declaration of the Rights of the Child. The declaration continues:

> Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924—

something else that the Chief Minister dismissed and just said, "No, that is not our interpretation"—

> and recognized in the Universal Declaration of Human Rights—

it is in the Universal Declaration of Human Rights as well Chief Minister; Attorney-General, perhaps your advice is wrong—

> and in the statutes of specialized agencies and international organizations concerned with the welfare of children,
>
> Whereas mankind owes to the child the best it has to give,

> Now therefore,
>
> The General Assembly
>
> Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles—

There it is. Let me read that again, "… calls upon … voluntary organizations, local authorities and national Governments …" The call is there from the UN for all of us making law in this place to recognise the Declaration of the Rights of the Child. If we pass clause 9 (2) tonight, we say to the UN that we do not recognise the Declaration of the Rights of the Child, we do not recognise the Geneva Declaration of Rights of the Child of 1924 and we do not recognise the Universal Declaration of Human Rights.

I put it to you, Mr Speaker, that we as a local authority—we are a territory government—should take note of this. When you go to the start of the Chief Minister's speech, you will see that there are almost three pages of how all these wonderful international covenants and declarations are the basis of what he wants to do here today, but he doesn't agree with the bits that don't suit him. That is where we get inconsistency and that is why this part should be voted down.

It is fine when you get up here and say, "It's a right to life press release, so it's okay to pooh-pooh." We say that we just don't agree with them; they don't understand the law. From reading the Declaration of the Rights of the Child and its reference to the Geneva Declaration of the Rights of the Child and the Universal Declaration of Human Rights it is clear that we should have appropriate legal protection before as well as after birth. That is the call from the United Nations. That is the call from the body, including the International Covenant on Civil and Political Rights, that has auspiced much of this bill. You can see this bill when you read the other covenants. It is picked out from the international law, and that is fine. Bolstering that law is fabulous, until you get to the bit that you don't like and then you ignore it.

It is important that we remove section 2. If we choose tonight as a legislature to leave in section 2, what it says is that we—the ACT Assembly—are not committed to the Declaration of the Rights of the Child; what it says is that the ACT Assembly and the people we represent are not committed to the Geneva Declaration of the Rights of the Child of 1924; and what it says is that we do not believe and we are not committed to the Universal Declaration of Human Rights. I ask members, particularly cross-benchers, to reverse their decision. That is a big call. I know the dedication that most on the cross-benches have to the various causes that they support, and I respect them for it.

But what this legislation does is take us beyond the pale. It says that we in this Assembly will now selectively pick and choose the bits of international covenants or international declarations that we like and suit us. You can't do that. If you vote against removing this section tonight, every time somebody refers to some sort of international declaration or

international covenant, I will personally stand up and remind you that, when it suited you, you removed the protection for the unborn that is recognised in at least three documents by the reading of these documents here tonight.

The Chief Minister claims that he has got advice that it doesn't matter. Any clear reading of that says it does. Perhaps the Chief Minister would like to come back and expand on the advice instead of giving his stock standard answer, "I've got advice that it doesn't count. You're wrong and I'm right." It doesn't wash, Chief Minister. You are talking about life, about a time-honoured declaration. We should be removing this section tonight.

MS DUNDAS (9.27): I will be brief as I have already put my views forward on this. I would like to correct some assertions made by the Leader of the Opposition. He spoke about the International Convention on the Rights of the Child and the right of the child to legal protection before and after birth. My understanding—and I believe it is widely recognised—is that this particular section of the preamble is retrospective. The right to legal protection before and after birth is granted to a child. It is used in cases where chemicals are used around pregnant mothers and the child is then born with birth defects. That is the major example that I can think at the moment. That is how it is being used in international law time and time again. The International Convention of the Rights of the Child is something that I have done a bit of work on. It has been recognised across nations that that particular section is retrospective.

Once a child is born, once they have taken breath, they are granted the protection and the right to argue their case if, through some form of action, they have been damaged when in the womb. Mr Smyth is claiming to be an expert on international law—

Mr Smyth: I did not claim that. You should withdraw that.

MS DUNDAS: Sorry, I withdraw. He did not claim he was an expert on international law; he said that if we pass this law today that we are giving up on the Convention on the Rights of the Child. Quite clearly we are not; we are supporting the rights of children. Mr Smyth needs to go back and look at the rights of the child and at the work that has been done around the rights of the child, as opposed to just reading the document out of context, and look at how international law has recognised that this is retrospective, that rights are granted once a child has taken breath.

MRS BURKE (9.30): I just want to make a couple of comments on what we have heard. I have sat listening to the debate and the whole thing has caused me great alarm because, whilst I have said that the rights of a human being are paramount and everybody deserves to have rights, I am very concerned about part 3, subclause 9 (2), in particular, about right to life. Ms Dundas was saying about the debate becoming narrow. Well, it is a sweeping and broad statement in that subclause:

> This section applies to a person from the time of birth.

The Leader of the Opposition, Mr Smyth, has put the case forward very clearly and articulately that we cannot decide in this place. That is a given; there are many views about that. Mr Stanhope says we have been working away for two years at this bill. It is interesting to note how it moved from being called a bill of rights to a Human Rights

Bill. We cannot really decide at this late hour. People have assumed and asserted and made sweeping statements that a person is a person at the time of birth. That is not so.

There are many conflicting arguments. I do not want to go into the abortion debate because Ms Tucker pointed some things out. I find it very hard that we legislate against life and death, particularly, because I believe that is between the individual, their family and their physician, but I am very concerned that subclause 9 (2) is going to cause us grief down the path.

I think we do not know what we are going in for. We have got very excited around the edges about some of this stuff that will possibly deal with some of the human rights violations that are currently being suffered by people—a minority I would have to say—in this territory. We cannot say it is the majority, but we need to certainly look after the rights of the minority.

Mr Stefaniak is proposing an amendment that is sensible if we must have this bill of rights, which no doubt we are going to have. I am very alarmed at that, and I will keep on saying that, because I am; it is concerning that this is just another example of legislation opening a can of worms. Mr Stanhope stood over there and made some sweeping statements about his position and about how we have responded as an opposition, and I will make my case. I think subclause 9 (2) is wrong in what it says. If that is going to stand, we have to consider the rights of the unborn child; otherwise, we have to remove the subclause altogether.

For me, life begins the moment a male sperm meets a female egg. It is simple; that is life. As Mrs Dunne said, you only have to watch a baby grow inside a mother's womb; you cannot deny that that is life. Recent research now suggests that that baby within the womb actually feels pain and so forth, and that is scientifically proven. It puts a big question mark over part 3, subclause 9 (2). I am disappointed in it, and, although I do not want to go into the abortion debate, I would implore the crossbenchers to consider very carefully what this really means and, in the fuller context, the conventions and rights of the child.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

Clause 9 agreed to.

Clause 10 agreed to.

Clause 11.

MR STEFANIAK (9.40): I just want to make a brief comment on this clause. This clause relates to the protection of the family and children and subclause (1) states:

> The family is the natural and basic group unit of society and is entitled to be protected by society.

Although I see the note that the family has a broad meaning, this subclause could be considered somewhat inconsistent with an act passed by this Assembly very recently, namely the Parentage Act dealing with same-sex adoption. The issues raised in that revolved around the best interests of the child and issues around family. Surely this particular subclause could well be quite contradictory to that. I do not hear Mr Stanhope saying that we should not have the same-sex adoption bill, the Parentage Act; that that should now be amended. But it does raise questions—and questions that might well be taken to the court—as to whether in fact that particular piece of ACT legislation now in the statute book is in fact inconsistent with this clause. I think that again shows some of the problems in this bill, which is going to be passed tonight.

Clause 11 agreed to.

Clause 12 agreed to.

Proposed new clause 12A.

MR STEFANIAK (9.42): I move amendment No 1 circulated in my name on the yellow paper, which inserts a new clause 12A *[see schedule 3 at page 604]*. This is a terribly important right and I am utterly amazed that it has not been included by Mr Stanhope in this bill. From clause 18 through to, I think, about 25, there is a plethora of rights—the rights of persons accused, rights of persons arrested, basically the rights of persons who are before the courts, the rights of criminals—but nothing about the rights of society in general, the rights of citizens to safety and security, and nothing in relation to the rights of victims. As you will see from this amendment, the source of this right is the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It was commented on in the annual report 2002-03 of the Victims of Crime Support Program by the Victims of Crime Coordinator. That report dealt with the bill of rights consultation and made these points:

> The VoCC, along with many others in the community, made a detailed submission to the Consultative Committee on an ACT Bill of Rights. That submission advised the Committee of the *Victims of Crime Act 1994* as an existing framework of rights for a section of the community. Reflecting on experience as a statutory promotional and compliance position for those 'rights', the VoCC expressed preference for:
>
> - A legislated Bill rather than entrenched rights,

- Consideration of a planning and development phase to enable agencies to engage in reform in anticipation of legislated standards,

- A promotional approach to 'rights' rather than a strict compliance approach,

- Acknowledgement of victim notification and inclusion within an updated encoding of fair trial proceedings, and

- Recognition of citizen's rights to safety and security.

The coordinator went on to say:

> The Report of the ACT Bill of Rights Consultative Committee…is groundbreaking for the Territory.

That is an understatement—

> The omission of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) as part of the raft of binding international documents is, however, puzzling. A consequence of this omission is that the Report fails to address some substantive questions as to the content of a proposed Human Rights Act.
>
> The principles contained within the UN Declaration of Basic Principles have been incorporated into legislative effect in most Western democracies, and in the majority of Australian jurisdictions. Its tenets have been given constitutional effect in the United States. Aspects of victim/witness support, participation and protection have been included in various of the war crimes tribunals and, most recently, in the Rome Statute for the creation of an International Criminal Court. The European Court of Human Rights has ruled that aspects of a victim of crime's rights are not incompatible with the right to a fair trial for an accused person. The principles contained within the 1985 Declaration are, through these developments, accepted as part of customary international law. In the report of the ACT Consultative Committee, however, not a mention of them is made.
>
> The omission from consideration of issues and rights for victims of crime has a number of disturbing consequences. The absence of discussion in relation to, for example, the right to safety and security vis a vis the right to privacy may throw into question current proactive interventions by state agencies into the family to protect adults and children.
>
> It is hoped that the community will be afforded further opportunities to debate and consider these questions and substantive content to a Human Rights Act.

It is worth repeating that final paragraph there:

> The omission from consideration of issues and rights for victims of crime has a number of disturbing consequences. The absence of discussion in relation to, for example, the right to safety and security vis a vis the right to privacy may throw into question current proactive interventions by state agencies into the family to protect adults and children.

We are currently having quite considerable discussion about abuse of children. There the Victims of Crime Coordinator has impressed upon us the need for a right to safety and security. It is crucially important and a fundamental right that, again, has been left out of this bill when other somewhat perhaps contrary rights are in the bill in clauses 18 to 25. This quite clearly is a right that is included in other documents as indicated on pages 8 and 9 of this annual report. It is a right, and it is only right and proper that this should be incorporated into this bill if the Chief Minister and the government are fair dinkum about protecting everyone's rights in the community, not just selective rights for some selected individuals and selected classes of persons. The right to safety and security is one of the most fundamental rights any human being can have and it is appalling to think that in this so-called wonderful Human Rights Bill that we are going to see passed tonight this fundamental right is not included. I commend the Victims of Crime Coordinator for picking this up. It is amazing it was not actually put into the consultative committee's report. It is in fact a glaring omission, and it is something that you people can rectify tonight by voting for this amendment, which I commend to you.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (9.48): The government will not be accepting this amendment. It is important that we understand what it is that we are debating and discussing here. We are discussing a proposal that a principle that is set out in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power be introduced into the Human Rights Bill as a right.

There is a very distinct difference between a principle and a right. One needs to then extrapolate that and to accept and acknowledge, irrespective of what is included in the Victims of Crime Coordinator's report, that there is no customary international law in relation to the rights of victims of crime or victims of crime and abuse. Irrespective of what might be contained in that annual report, Mr Stefaniak, there is no such customary rule of international law. We are talking here about a principle. It is a principle and it has received some recognition.

Mr Stefaniak: A fundamental one.

MR STANHOPE: No. That is the difference, Mr Stefaniak: it has received some recognition as a principle. The United Nations or treaty nations have not reduced it to a treaty. The principles that have been enunciated have not been reduced to rights. The nature of the right has not been explained. There has been no extrapolation. There is no definition of the rights that we are talking about here. Essentially, what you propose—that everyone has the right to safety and security—is not backed by any international jurisprudence. There is no treaty right to safety and security. There is no international understanding, no understanding at international law, about what the right to safety and security means. It is essentially meaningless.

What does it mean? There is a full body of international law developed in relation to the rights contained in the International Covenant on Civil and Political Rights; these are treaty rights. In international law and national jurisprudence the precedent exists in relation to all of those rights. There is none in relation to this principle. You are proposing to introduce into the Human Rights Act a laudable notion—that everyone has the right to safety and security—but it is a principle; it is not a right that has been

reduced at international law. There is no understanding of what it means in international law. There is no jurisprudence, there is no precedent and nobody knows what it means. You cannot stand up here now and tell me the limits of that right and whether or not any court around the world has deliberated on the meaning of that right or that principle.

Mr Stefaniak: You tell me the limits of any of the rights in here.

MR STANHOPE: There is a body of jurisprudence, of precedent of international law on all of those rights, Mr Stefaniak. This is the point: you are seeking here to introduce a notion that simply has not developed at international law to the point where it is safe for us to include it in the Human Rights Bill. It may be that it is a right that we could include at some stage. We have had a debate earlier tonight about the inclusion of economic, social and cultural rights. It may very well be that this is amongst a range of other rights that we might fruitfully debate in the future, but today I do not believe it is appropriate at all for us to include in the Human Rights Bill a principle enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power a principle that does not have treaty status and is not binding on any nation. It is not a binding document, it is not a treaty, it does not have that body of international law backing it and it should not be included at this stage in the Human Rights Bill of the ACT.

MS TUCKER (9.52): I also will not be supporting this amendment. As Mr Stanhope said, Mr Stefaniak is attempting to add a right to safety and security which he has drawn from the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Already in the bill there is a right to liberty and security of person, drawn from the Universal Declaration of Human Rights. Safety may well be a useful addition but it does not seem to be part of any established international instruments on human rights and I do find it rather ironic that Mr Stefaniak, who has been so damning of this legislation because of what he perceives to be a lack of jurisprudence and of a guiding law to interpret it, is so prepared to just add his own concept of a right in the way that he is proposing with this amendment.

The proposal does not come from a declaration of rights but, as I said, the declaration of basic principles. The declaration is not written in terms of rights. There is no formulation of a right to safety and security in this document. It is a guideline for dealing with victims of all sorts of crimes and abuses of power. It is useful perhaps in considering legislation limiting support for victims of particular crimes. Indeed, it might have been useful during the last Assembly, Mr Stefaniak, when we were debating victims of crime.

However, even overlooking that point and overlooking the fact that this right is not expressed in those terms in the document, this is one aspect of a complete statement and that creates problems in balance. As Mr Stefaniak pointed out during the in principle debate, rights need to be balanced against each other. So to pick only one right out of a statement of principles on this particular topic is of concern. Why not draw from these principles a right to be free from abuse of power? This is quite a pressing dilemma for our society at the moment. In the pursuit of measures argued to enhance our society, abuses of power are arguably becoming more likely as the protections against are whittled away. Fear of terrorism is reducing everyone's security and safety from abuse. Meanwhile, of course, our environmental security is being actively eroded without much effort to change the way we do things. I will not be supporting this amendment.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

Proposed new clause 12B.

MR STEFANIAK (9.59): I move amendment No 2 circulated in my name on the yellow paper, which inserts a new clause 12B. *[see schedule 3 at page 604]*. This inserts a most basic right, which is strangely omitted from this bill, and that is the right to own property. The source of this right is the UN Universal Declaration of Human Rights—not principles but an actual declaration of human rights. My amendment states:

> (1) Everyone has the right to own property, either alone or with others.
>
> (2) No-one may be deprived of his or her property, except in accordance with law.

It is interesting that the scrutiny of bills committee has commented on this issue. On page 13 going over to page 14 of its report it deals with the selection of the rights for recognition. It notes that at clause 7 of this bill it says that the act is not exhaustive of the rights and in the explanatory memorandum it states that the purpose of this clause is to ensure the act is not misused for the purpose of limiting a right a person may have on the basis that the right is not recognised in the bill or is recognised to a lesser extent. Towards the bottom of page 13 of the report it states:

> The Bill proceeds on there being a sensible division between two kinds of rights. A more particular concern for some will be that recommendations in the Consultative Committee report for recognition of a right to self-determination, and rights of minorities, may fail to accord sufficient rights recognition for the indigenous community.
>
> From another and quite different perspective, a matter of concern is the omission of any recognition of the civil right of protection of property. This right is recognised in Article 17 of the Universal Declaration of Human Rights (the foundational document of the international human rights framework):
>
> Article 17

> 1. Everyone has the right to own property alone, as well as in association with others.
>
> 2. No one shall be arbitrarily deprived of his property.

That is very, very similar to what I have here, except paragraph 2 of my amendment states "his or her property, except in accordance with the law" to make it consistent with the rest of this bill. The scrutiny of bills committee report goes on:

> The Universal Declaration of Human Rights has a status at least commensurate with that of the ICCPR and ICESCR—the two international human rights treaties that inspired the recommendations of the Consultative Committee (see above at 2.25). Even if the decision to omit the reference to the ICESCR rights in the Bill is justified, the omission of a recognition of a right to property is harder to justify, given that it is clearly a civil right. The Explanatory Statement (at 4) acknowledges the primacy of the Universal Declaration.
>
> In addition, our legal and constitutional tradition attaches great significance to the right to property. In one case a judge observed that
>
> > there is a wealth of authority establishing that there is a common law right recognised in this country protecting citizens from invasions of their private rights to property and possessions. Indeed, the whole history of the law is fundamentally based on the law of trespass and the protection of citizens from interference by unlawful seizure or removal of that citizen's property by force or without the consent [of] the citizen: (see *Police v Carbone* (Supreme Court of South Australia, 26 March 1997).
>
> The Committee appreciates that some aspects of a right to property have a higher status in the law of the Territory than a right stated in this Bill. Under paragraph 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988* "the Assembly has no power to make laws with regard to: (a), the acquisition of property otherwise than on just terms;...
>
> This right is, however, narrower than the broader right to property stated in Article 17 of the Universal Declaration of Human Rights.

Quite clearly, this is a right and it is an obvious right that should go in any bill of this sort. Why is it not there? Does the government want to ensure that we have absolutely no rights to property? Is this some sort of North Korea type idea, or socialism running rampant? I certainly hope not. But it is an absolutely glaring omission and I think the scrutiny report, and the words there of its learned adviser, are very, very telling. It is somewhat hypocritical of this government to purport to have this wonderful new Human Rights Bill, which is going to get passed tonight by you people, and not have in it one of the most basic fundamental rights in the UN Universal Declaration of Human Rights: the right to own property. Quite clearly, if you even remotely profess to be serious about human rights, this is a right that should go in there.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (10.04): That was a very good speech, Bill. What is a right to property? What does it mean and why is it not in the ICCPR? It is not in the

ICCPR, Bill, because none of the treaty nations could work out what it meant. If the United Nations—

Mr Stefaniak: You cannot work out any of these rights, Jon, so why are we having this silly bill?

MR STANHOPE: Yes, we can, Bill; that is the point. The ones that are included in the ICCPR were understood, have been legislated on and interpretation has been provided. There was no agreement in the negotiations at the establishment and development of the convention on what was meant. I have to say to the shadow attorney that it really is an issue, I think, for scrutiny of bills in relation to those aspects of the debate and some of the points that were made about the very obvious gaps. I did point this out to you in the government's response to the scrutiny of bills committee report about the very glaring gaps in argument and logic provided in the dissertation that you just read from. You read from the scrutiny of bills committee report. For the sake of balance you might have informed or advised members of the Assembly of the government's response to the claims made in the scrutiny of bills committee report; I will provide that information for members of the Assembly:

> The Committee also argues for property rights to be included in the Bill. As the Committee is aware, the Bill gives effect to the rights enshrined in the ICCPR and are therefore binding under international treaty law. The prohibition on arbitrary or unlawful interference with the privacy and home provides protection against unreasonable or unlawful house searches. By contrast, the right to own property and not be arbitrarily deprived of property was considered during the draft of the ICCPR and abandoned because of the wide divergence of opinion on the nature and limits of the right. An important consideration was the definition of property.

There was no agreement on the definition of property—

> And in the European system the concept of property has been interpreted to include not just physical property but also rights and interests such as claims to income support and compensation.

Is that what the opposition proposes in relation to this amendment? Does the opposition propose to include in the Human Rights Bill rights to income support and compensation? Is that what it means? The opposition cannot say what it means by a right to property. If it cannot say what it means, it cannot include it. The inclusion of property rights in the bill therefore raises a number of very significant, very important and very complex definitional issues. The inclusion of property rights at this stage will not be supported by the government because of the difficulty surrounding the intent, the meaning and the definition, and the fact that at this time it was quite deliberately excluded by the drafters of the ICCPR from the ICCPR because no agreement could be reached on what it means.

It is important that we note that and understand it so that we know the context of the debate we are having here. Once again, however, this is another one of those issues that might profitably be pursued in the future, that would profit from some further analysis. Perhaps we can come to an agreement and some finer understanding of what it is that we are talking about. But at this stage there is a range of protections in relation to the protection of our property—essentially, at least, our homes—and, of course, they are encapsulated.

Another issue that would obviously be raised in the context of this right to property is whether or not the opposition intends that it include leasehold land. What is it that you mean? Do you propose to impose some definition over and above that that applies to the system of land registration that we have here in the ACT? Are you suggesting for any minute that the land registration system that applies to the leasehold system in the ACT be rendered inconsistent by your amendment? Is that what you mean? Is that your intention? What do you mean? You do not know what you mean. You do not provide us with a definition of property. We cannot possibly proceed with this amendment.

MS DUNDAS (10.09): I find it quite interesting that Mr Stefaniak can stand up and so eloquently argue for the right to safety and security and the right to own property, but is opposed to including in this legislation the right to health, the right to education, the right to work and the right to self-determination. He is picking and choosing rights at whim to include in this piece of legislation.

I would be quite happy to debate more fully the United Nations Universal Declaration of Human Rights for inclusion into this legislation and I would welcome it if Mr Stefaniak had done the work and tabled as amendments all the rights that surround the right to own property. But he has not done that, so I believe that that will be a debate that we will have at a later stage when we debate the right to self-determination, the right to work and other economic, social and cultural rights.

It does appear that the opposition is just picking some rights to have a debate around, without really looking at them in the fuller context. As has been said again and again in this debate, all rights are interrelated and interconnected and we need to be discussing them in that fuller picture as opposed to just picking and choosing.

MS TUCKER (10.10): This is an interesting amendment. The right to own property is a right, as other members have said, expressed in the Universal Declaration of Human Rights at article 17, and article 17 is not translated into the two later instruments of human rights, mainly, I understand, because there was not consensus and there were objections to such explicit protection of private property.

I understand that Justice Brennan in the Mabo No 1 case used the right to property to argue that native title existed. The right to own property is also implied in the Australian Constitution. Section 51(xxxi) gives the Commonwealth parliament the power to legislate with respect to the acquisition of property on just terms from any state or person for any purpose in respect of which the parliament has power to make laws.

However, Mr Stefaniak's amendment is not a direct copy of article 17. Paragraph 2 of article 17 reads:

> No one shall be arbitrarily deprived of his property.

Paragraph 2 of Mr Stefaniak's proposed right states: "No-one may be deprived of his or her property, except in accordance with law," and this does not have the same meaning as "arbitrarily". The term "arbitrarily" features in several of the rights expressed in this bill. "Arbitrarily" means something like not in accordance with a law that itself accords with human rights or in the absence of such law not in accordance with human rights. It

does not mean simply not in accordance with law, because, as we know, laws can and have been made that are not respectful of human rights.

I do not have a problem as such with the right to own property. However, I am concerned that it is not written in the same terms as in the declaration, and at this stage of proceedings I do not think I can support it.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

Clause 13 to 27, by leave, taken together.

MR CORNWELL (10.16): I would like to speak to just a couple of those. Clause 13 speaks of freedom of movement. It says:

> Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

But presumably not the right to own his or her residence in the ACT. I find clauses 15, 16 and 17 very obvious. Once again, I agree with Mr Stefaniak. This is the most absurd piece of legislation we have debated in a long time. Clause 15 is peaceful assembly and freedom of association, Clause 15 (1) reads:

> Everyone has the right of peaceful assembly.

I have no problem with the right of peaceful assembly. However, I have a small dilemma: is it possible to have a peaceful assembly and still break the law? Perhaps the—or the erudite Attorney-General—can tell me the answer.

Mr Pratt: It is, if you are marching outside the US embassy.

MR CORNWELL: I am thinking of a peaceful assembly that was held recently outside the Australian Federal Police offices, when a fire was lit on a fire ban day. That was a peaceful assembly, but are you not breaking the law by lighting a fire on a fire ban day? I do not expect anything to happen. I understand it was indigenous people and their supporters and, in this city, nothing happens to those people. Nevertheless, I am curious to know if a peaceful assembly can be associated with the breaking of the law.

Clause 16 (2), on freedom of expression, is very interesting. It says:

> Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

Does that mean that we do not have a problem with graffiti any more? Can they tag what they like, up and down London Circuit? What about pornography? The words are: "…whether orally, in writing or in print, by way of art, or in another way chosen by him or her." So what about pornography?

I welcome the opportunity to get this one into the *Hansard*. I refer to an article in the *Montreal Gazette* on 26 July. How is this for political correctness? It says, "How about women with high-risk lifestyles?" The article was referring to prostitutes. Does that cover freedom of expression? I do not know. I am just a poor, ignorant person, confused by this Human Rights Bill and I just want to know. I am taking the words at face value. I presume that the words cover these things. I refer to clause 17, taking part in public life. Clause 17 (c) says:

> have access, on general terms of equality, for appointment to the public service and public office.

What on earth does the expression "on general terms of equality" mean? Does it mean gender equity, or perhaps age? Are we dealing with legislation that can protect people like myself? Who knows? These expressions require definitions, which I do not find anywhere in this legislation. If we do not get these expressions defined in this piece of legislation, I fear that the good people of Canberra—all 320,000 of them, or at least the 120 who attended the meetings that were conducted on this legislation—will be speaking of nothing else in the next few weeks. I suggest that, unless we have this sort of clarification, this legislation is less useful than the Litter Act, and that the purpose of the legislation is not about people, it is just about left-wing philosophy.

MRS DUNNE (10.21): It is true that clause 13 says that anyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT but, as Mr Cornwell said, we do not have the right to own our residences and the aged of the ACT do not have the right to an appropriate residence to meet their needs.

Words sometimes fail me. The Chief Minister has stood in this place on two or three occasions and said that you cannot have your rights in this because they cannot possibly be defined. You cannot have the right to own things that you can hold such as real property, a car or a block of land—well, you cannot own a block of land in the ACT—and the right to not have them taken away from you on unjust terms.

There are screeds of law about property rights. That subject was too hard for the United Nations, so they did not address it. We know why they did not address it. There were a whole lot of lefties—communist eastern blockers—in the 1950s and 1960s who said, "Comrades, we cannot have private property. Nyet, nada—no private property." That is why we do not have those rights.

Mr Pratt: The UN is speaking a lot of French!

MRS DUNNE: I am speaking now; Mr Pratt will have his turn later. When it comes to issues like freedom of thought, conscience, religion and belief, they beggar belief. It is absolutely absurd, in many ways, to try and protect these things. When you say you have freedom of conscience and you do not have anything in the substantive clause to define "conscience", what is freedom of conscience about? Is freedom of conscience about refusing to participate in abortion if you conscientiously object to it? The answer to that is no, because this place legislated that right out of existence about two years ago. Is it about freedom to slaughter the infidels; or freedom to have one's daughters mutilated? That would be an exercise of right of conscience in many places, but is it acceptable in Australia? I think not.

Clearly, in a civilised society, people can tolerate some exercises of conscience but not others. There is nothing in this legislation to say what those exercises of conscience are. Without qualification, this legislation is meaningless and exposes the ACT and its courts to a range of arguments that various forms of crime, up to and including terrorist acts, are all right because they are the result of the exercise of conscience or belief and must therefore be protected. Clause 14 is an absurdity. Without any constraint on this right, it means that it is open slather. This is the problem with almost everything in here. It is either undefinable, meaningless, open slather or all of the above.

The peaceful assembly is just motherhood. Before we have even passed this legislation here today, we have seen the right to freedom of expression curtailed by this Attorney-General, who is in this place today extolling the Human Rights Bill as groundbreaking in Australia and in the world. What did he do? He applied the gag. How pathetic is that.

The next one is the right to take part in public life. Subclause 17 (b) is the right to vote and be elected at periodic elections that guarantee the free expression of the will of the electors. The free expression of the will of the electors by their elected representatives was gagged in this place by the Attorney-General, who came in here and said that the legislation is groundbreaking; that he is doing all this to protect people's rights. The legislation is meaningless. It was made meaningless and absurd before it has even been voted into law.

There is no reference in the legislation to what we might do with someone who is guilty of sedition. That is free expression; we can do anything we like because there are no constraints in this law and there are no constraints on the imagination of this Attorney-General. All he wants to do is create a monument for himself, and in doing so he has created an absurdity.

MR PRATT (10.26): I want to talk specifically about clauses 18 to 25. I find it disturbing that clauses 18 to 25 of the bill of rights, dealing with the rights of those participating in criminal behaviour, is far greater in content and detail than the section dealing with protecting those who obey the law—clauses 12 to 17. Clauses 18 to 25 have been almost lovingly padded. Again we see an inverse position reflecting this government's priorities. Championing the rights of those who challenge the law seems to be far more important than protecting those who abide by the law.

In clause 18 there are seven subclauses enshrining the rights of those who may be detained. There are plenty of provisions there for bail and release, and for ample time to be provided for mounting a defence in a trial. But very little is said elsewhere in the bill of rights about the expedition of trials and the expedition of justice; and very little is said about the appropriate detention of lawbreakers with a history of violence.

As I said earlier today there is little provision in this bill to protect the innocent. To illustrate my point, at clause 22 (2) (c), a person has the right to be tried without unreasonable delay. That provision is reasonable; however, we feel strongly that from the tone of the embracing text the emphasis in this section of the bill is on what the defendant and his or her counsel may want. If delaying the trial is advantageous, that is fine, but it is versus expediting justice in the interests of a safer community.

Clause 23 covers compensation for wrongful convictions. Again we see the gross imbalance that this bill of rights represents. The bill of rights comprehensively covers the rights of somebody who is wrongfully convicted. That is fine and reasonable, but where are the provisions in the bill of rights for the compensation of victims of crime? This government again demonstrates its disdain for the protection of the community. The balance here is in favour of the alleged criminal or those who may be detained.

I am deeply concerned with what is an imbalanced bill of rights. The legislation is designed mostly to protect those who may be offenders, not those who may be offended against. This bill undervalues the fundamental rights of the following principles of safe living: the rights for the protection of property, the right for the protection for police going about their duties, the right for police to be supported, if unfairly accused or convicted themselves; the right to see justice expedited in the interests of a safer community. Will there be another bill of rights to protect the rights of the rest of the community—bill of rights Mk II; son of bill of rights?

How many more rights must we have, to extend to those who are detained on suspicion of crime or to those who are on bail with a track record of violence, or with a proven burglary record and a drug habit to feed? The existing provisions in ACT law are ample to ensure the rights of detainees and criminals. We have sufficient provisions in place to make sure that the rights of those who are detained or convicted are looked after. What about the rights of offenders to have their cases expedited and processed through conviction procedures? What about their rights to be firmly but fairly dealt with, do their time quickly, get rehabilitated and then return to society as reformed citizens? What about the rights of the community at large to see justice done and offenders returned safely to the community?

This bill of rights is out of whack. Clauses 18 to 25, while containing important provisions which I support, cater for only one side of justice. To that point the bill of rights is a disgrace. A great majority of the ACT community is disenfranchised. At this rate every criminal in Australia will come here and hat will put up property values. It is a strategic plan to increase property values in the ACT. That will take the ACT from the second highest to the highest burglary rate in Australia. This bill of rights is a sham and a joke. If this bill of rights is passed we will become the laughing stock of the Western world.

MR STANHOPE: This is the only place in the Western world without one!

MR PRATT: Quite seriously, we will become the laughing stock of the Western world. I look forward particularly to clause 35. Check out clause 35, Mr Stanhope, the dear leader.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for Environment) (10.32): I want to reflect on the extent to which the Liberal Party in this place are belittling the International Covenant on Civil and Political Rights. I remind them at this juncture in the debate that is was their esteemed and I think most successful and respected leader, Malcolm Fraser, who negotiated the ICCPR on behalf of Australia. It was Malcolm Fraser who adopted the ICCPR and it was Malcolm Fraser and the Liberal Party who introduced the ICCPR.

Malcolm Fraser negotiated each of these clauses that are causing the Liberal Party such mirth and hilarity today. It was the Liberal Party of 20 years ago, under the leadership of Malcolm Fraser, that negotiated it, agreed to it and introduced it into Australia. Keep up your derision; keep up your belittling and keep up the nonsense. At the end of the day as you pour this mindless, childish, scorn on a most serious piece of legislation, just acknowledge that it was Malcolm Fraser and the Liberal Party who negotiated the ICCPR and acceded to it on behalf of Australia.

MR STEFANIAK (10.34): Mr Pratt might be wrong in saying we will become the laughing stock of the western world because, fortunately or unfortunately, quite a few countries do have bills of rights. But we will certainly be the laughing stock of the rest of Australia because even your Labor colleagues, particularly Bob Carr, are absolutely dead set against nonsense such as this.

If anything comes out of this debate tonight it will be the huge problems this bill is going to cause, such as problems with the right to own property and the right to safety and security. Try defining some of the other rights here. I think it will be an absolute nightmare for the Supreme Court when matters come before it in relation to this piece of legislation. I think that the idiocy of putting forward something like this is coming home to roost through the debate tonight.

I will refer to some of the points in what we are debating cognately now. Firstly with freedom of movement, it is interesting that we recently passed some legislation allowing unions an unfettered right to go into a workplace—much greater even than that of police. I have no particular problems with clauses 14 and 15, but I was interested to see—I am not sure if Mr Cornwell mentioned this; I would be surprised if he did not, given his views on graffiti—that clause 16, freedom of expression, subclause (2) gives that right. It says:

> This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

Does that mean it is open slather with graffiti? We have enough problems as it is, but that is one potential way of interpreting that clause. That may well mean it would be impossible for anyone to be convicted of a graffiti offence.

Mr Stanhope: Read section 28 to us.

MR STEFANIAK: That is interesting. I will come to that, although we are not dealing with that one yet.

MR SPEAKER: We are dealing only with clauses 13 to 27.

MR STEFANIAK: Thank you, Mr Speaker. I will come to clause 38, which talks a lot about the scrutiny report.

There are significant problems in relation to clause 18. Clause 18 (5) states that anyone who is awaiting trial must not be detained in custody, as a general rule. This is contrary to a number of very sensible provisions we have in legislation, such as restrictions on persons getting bail.

The Bail Act ensures that persons who commit further crimes whilst they are on bail are remanded in custody unless there are exceptional circumstances. I consider that to be a very sensible piece of legislation that has helped to reduce the burglary rate significantly and helped to reduce other types of crime such as armed robbery. I hear what Mr Pratt says. That could well be a real problem because of the incompatibility of some of our acts. Those acts are not necessarily overridden by this legislation but they seem to be inconsistent with some of the clauses in the Human Rights Act.

In particular, it would seem that clause 9A of the Bail Act, as it stands, is inconsistent with Mr Stanhope's clause 18 (5). We will be supporting, and in fact trying to beef up, some of the legislation that will be passed in relation to bail legislation but that might also be inconsistent with this legislation. Subclause (5) could well mean that as a general rule anyone, no matter how serious the crime they are alleged to have committed or no matter how many crimes they have committed and continued to commit until their matters are finalised, can remain at large. Quite clearly that is something most of the community would have huge problems with. This again indicates problems with Mr Stanhope's bill. Clause 18 (7) states:

> Anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.

I would hate to see that interpreted to mean that anyone in that situation would automatically get compensation. People may have been arrested unlawfully on a technicality but, morally, they deserve to have been arrested and it is only a legal quirk that makes the arrest unlawful. In no way should people who have committed offences and deserve to be arrested be able to get compensation just because of a legal technicality.

We have provisions in our law. For example, whilst costs follow the event in case of an unsuccessful prosecution in the Magistrates Court there is a general rule that, if the

defendant brought it all on themselves, as in *McEwan v Sealy*, they are not going to get any costs because they have got off on a technicality. Quite clearly their behaviour has been so reprehensible that the circumstances negate the fact that because of some technicality they may have escaped a conviction. With this, is that going to happen? Not the way I read this. This could well be interpreted to ensure that anyone who has been unlawfully arrested will get compensation. That could be another problem.

There are some further problems in relation to clause 22 which the scrutiny of bills committee reported on. On page 12 the scrutiny report states:

> It is clear that the exercise by person A of her or his rights can impinge on the rights of person B. The provisions of clause 22 of the bill state that several rights in criminal proceedings point to the problem. This clause states several rights of the accused who is charged with a criminal offence. There is undoubtedly a public interest in the accused having a fair trial. It has also been judicially recognised that the public interest also embraces the interests of the public as a whole that the guilty are convicted. On some trials such as those where the accused is charged with sexual assault it is also allowed that the complainant has an interest which may be fairly seen as a personal right in how the trial is conducted. Much could be said about the detail of clause 22 from the perspective of the rights of the public and of those who undoubtedly are, or who claim to be, victims of the crime with which the accused is charged. The queries posed below are simply indicative of the general issue.
>
> - Does the right of the accused to examine prosecution witnesses—paragraph 22 (2) (g)—afford to an unrepresented accused an unrestricted right to cross-examine a prosecution witness, say where the witness is the complainant of a sexual offence? See how this right is buttressed by the right in paragraph 22 (2) (d) for the accused to defend himself or herself personally. More generally, what effect does this right have on the rape shield laws and those laws that govern how the complainant of a sexual offence may be examined in the trial. Does the right of the accused to have legal assistance provided to him or her if the interests of justice require that the assistance be provided and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance—paragraph 22 (2) (f)—mean that the trial must be stopped if someone does not provide that legal assistance?
>
> - Does the right of the accused not to be compelled to testify against himself or herself or to confess guilt mean that on the trial itself the accused may give evidence and then refuse, on cross-examination, to answer any questions that would tend to implicate her or him in the commission of the offence charged?

Clause 24, the right not to be tried or punished more than once, is also a problem. It reads:

> No-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

People may well be aware of significant moves nationally to ensure that a criminal who has been acquitted for a serious offence—for example, murder—can now be brought back before a court and tried again if significant evidence indicating his guilt comes to light at a later stage. That is important in relation to advances in DNA testing. Just as persons who have been wrongfully convicted can now use DNA evidence to secure their

release, murderers and other serious criminals who have got off can now be fingered as having committed the crime, as a result of advances in technology. Why on earth should they not be prosecuted again?

Why should not a person, where they are acquitted due to an error made by a judge, not be tried again? That is not even double jeopardy; that is part of the process where there is an error made and that person is acquitted. Currently, unlike in other states, the prosecution cannot apply to have the person tried again. In fact, I have a bill on the table in relation to that. I would suggest that clause 24 is not necessarily in the interests of justice and that many victims in society will be hurt as a result of this clause.

Finally, Mr Stanhope deals with the rights of minorities. That is fine but he does not say anything at all about people generally. Why are we just dealing with minorities? Why should it not just read that anyone who belongs to an ethnic, religious or linguistic group should not be denied the right to enjoy their culture? Why does he stipulate minorities? I believe this is a real problem with this bill. I thought human rights were meant to be about everyone—protecting groups, whether they are minority groups or majority groups. This gets back to the point Bob Carr and other people who oppose this bill have made so effectively—that if you place over-emphasis on the rights of certain sections of society, invariably, in a sophisticated society like Australia and the ACT you will be taking rights away from a lot of other people. It is just commonsense—it happens like that. There are some potential problems there too.

Clauses 13 to 27 agreed to.

Suspension of standing order 76

Motion (by **Mr Wood**) agreed to, with the concurrence of an absolute majority.

> That standing order 76 be suspended for the remainder of the sitting.

Clauses 28 and 29, by leave, taken together.

MR STEFANIAK (10.45): The Chief Minister earlier made mention of clause 28. My colleague, Mr Smyth—I am not going to repeat what he said—made eloquent comments just before the dinner adjournment, in relation to the separation of powers and the comments made by many learned justices over the years in relation to that issue. At pages 5, 6, 8, 9 and 10 of the scrutiny report, much is said in relation to clause 28. In clause 28 there are significant problems which jump out at you. It says:

> Human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

How on earth are "reasonable limits" going to be established? In talking about the parameters, what is meant? Where are the limits? How are our poor Supreme Court judges meant to interpret that? How are they going to be able to do that without making judgments in relation to rights, and without going down the path of adopting a role which is much more appropriate for the legislature than the court? There were points made earlier in relation to the separation of powers, what a court ideally does and how a court

decides cases. That is totally different, and a different sort of reasoning from the reasoning we use here in terms of legislation is used.

I will quote part of the scrutiny report. My colleague, Mr Smyth, has quoted quite large slabs most effectively in relation to this clause and the very real problems with judicial interpretation and what the judiciary is being forced to do. There is one very good judgment I will reiterate, which I think is terribly important. Sir Gerard Brennan, a most capable Chief Justice of the High Court, argued that:

> To vest in courts the function of review of legislation against rights standards would bring about a massive constitutional change, which would erode a corresponding change in the judicial function and judicial method.

That was Sir Gerard Brennan in *The impact of a bill of rights on the role of judiciary: An Australian response*. He delivered a paper to a conference entitled *Australia and human rights: Where to from here?* at the ANU in July 1992. He stated at page 15 of his paper:

> At the end of the litigating day the translation of political, social, and ethical values into legal principles must be articulated by the judge. He or she cannot avoid giving effect to his or her values in determining whether an impugned law or executive act is obnoxious to a bill of rights and unjustifiable in the collective interest.

There are real problems in relation to that. The scrutiny report, specifically in relation to this clause, said:

> The non-judicial function which this bill would confer on the Supreme Court of the territory is the power in clause 28 to make a non-binding declaration on the invalidity of a territory law. Whether such a power may be validly vested in the Supreme Court is not the point to which the committee now draws attention.

It seems there is some issue in relation to that. It continues:

> Rather it is that it appears arguable that this power is incompatible with the judicial function of the Supreme Court, and given that the rationale for the incompatibility theory is the protection of the liberty of the citizen …

There is an issue as to whether clause 28 is an undue trespass on personal rights and liberties. The basis for this kind of argument is indicated by what the consultative committee said about the role of the Supreme Court under its proposals. In this respect the bill follows the proposals. The consultative committee said at 4.23:

> A declaration of incompatibility (under clause 28) is a significantly strong and appropriate enforcement mechanism to underpin the dialogue approach of the ACT Human Rights Act. Human rights issues may involve complex questions about morality and the allocation of public resources. These are questions that should properly be finally resolved by the legislature with the assistance and advice of the judiciary.

There is emphasis added to the words "with the assistance and advice of the judiciary". The explanatory statement accepts that the bill is based on the interpretive and dialogue method—page 6. It continues:

> It is, however, the conferral of that kind of role on the Supreme Court that is the basis for the argument, as explained above, that clause 28 might be seen as an undue trespass on personal rights and liberties. What exacerbates the problem is the nature of the task the Supreme Court must perform when it gives assistance and advice to the legislature. Judicial review against rights standards will, or may have, two effects. It will, on the one hand, vest in the Supreme Court a power to impinge upon the range of issues open to the other branches in respect of a vast range of social, political and economic issues; and—

There is a new dot point which reads:

> On the other, may thereby diminish to some extent the authority of the legislature and, ultimately, of the power of the citizenry to govern themselves. As these matters become evident there would be a diminution of respect for the judiciary in the eyes of the legislature, the executive and the citizenry. There would also be calls for vetting of judges who decide these cases in order to ascertain the extent to which they would exercise their power of review.

A concerned Bob Carr in the New South Wales committee that looked at the bill of rights issue commented on that. It continues:

> Even allowing for the limited scope of judicial review that is part of this dialogue model, there is a clear risk that judges will be seen as part of the political process and not independent of it. This in turn may lead to disrespect for the judges, disrespect for their authority and lack of legitimacy for their decisions. For these sorts of reasons, there are many judges with experience of the task of judicial review who say that this is not an appropriate judicial function.

I have already read from Sir Gerard Brennan's statements. There are a number of other learned justices who are commented on in the scrutiny of bills report.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.51): I will respond very briefly. I regret taking the time of Assembly members on this, but these points were made in the scrutiny of bills committee report and we have had a debate about that. The government has given a fairly detailed response to the issues raised in the scrutiny of bills committee report. I think this particular scrutiny report raises some questions that might usefully be debated in the Assembly at some other time, in the context of the structure of that committee. I will give some indication of part of the response of the government to the points that have just been raised. The government's response includes the following comment. It says that the scrutiny committee:

> … also suggests that, by involving the courts in the interpretation of human rights principles, the bill will undermine the independence of the judiciary and the respect for the rule of law in the wider community.

There is a legitimate philosophical debate about the value of a statutory bill of rights, as opposed to one that is constitutionally entrenched, which allows the courts to strike down inconsistent legislation. But I do not accept the committee's unnecessarily bleak view of the impact of the bill on democracy in the ACT. The judiciary perform an important

check on the excesses of executive power and they are essential to a functioning democracy, as is the executive and the legislature.

There is little evidence—in fact, I do not think there is any evidence at all; it would have been useful for the scrutiny of bills committee or the shadow attorney to refer to this—of the extent to which the independence of the judiciary or respect for the rule of law has been undermined in the United states of America, Canada, the United Kingdom, New Zealand or any of those other western common law democracies which have introduced a bill of rights into their domestic legislation.

Where is the evidence? Where is the evidence to back up the claims just made about the diminution of respect for the judiciary or the extent to which there has been some weakening of the democratic institutions in those nations—those great, powerful, democracies—as a result of their having introduced and legislated a bill of rights, either statutorily or constitutionally in their nations? You cannot point to it, because it does not exist.

It is an absolute nonsense to suggest that the democratic institutions of the United Kingdom, or respect for the judiciary in the United Kingdom, have weakened as a result of the fact that the United Kingdom, the home of the common law, acknowledged that the time had arrived to seek to protect rights through mechanisms other than common law, as a result of which they legislated a bill of rights in their Human Rights Act six years ago. The strength of that democracy, the strength of those institutions, respect for the law and respect for the judiciary and the courts in the United Kingdom has not wilted or been affected one iota as a result of that. Nor has the strength of the New Zealand democracy, the democratic institutions of New Zealand or the courts of New Zealand been affected one bit in the last 10 years of experience of the New Zealand bill of rights.

This is absolute nonsense. It is scaremongering nonsense that is not based in fact or reality, which has no appreciation of the operation, role or functioning of bills of rights in any other western democracies, the common law nations of the world. It is just arrant nonsense that has been dished up here tonight.

MS TUCKER (10.55): I agree with the comments of Mr Stanhope, but I think Mr Stefaniak and the Liberals generally, going through the previous section as well, were taking a position which seemed to indicate that they had not read section 28 on the limitation of human rights. I mentioned this in my in-principle speech but I think it is important to again make it quite clear if the opposition were genuinely not aware of it, although Mr Stefaniak obviously is aware of it now when he wants to address clause 28, criticise the report and raise certain issues.

Some of the other members seemed to have no understanding of the fact that there are competing rights and that rights are taken in the context of the general welfare of a democratic society. This is quite clear in the committee report, which hopefully has been read by members on the other side, although some of the comments made tonight make me think they have read the report.

I also want to talk briefly to some of the issues raised by Mr Stefaniak. I will quote from one section of the report. Although there are plenty of other references that we could go to on this, I will not do so, for the sake of time. On the question of integrating economic

and social rights in national legal systems, another objection often made to protecting economic and social rights in national legal systems is that they are not justiciable in the way of civil and political rights and would require courts to become embroiled in political and economic issues.

For example, the inclusion of economic and social rights in the 1996 South African Constitution was challenged as a violation of the framework principles set out in the 1994 Interim Constitution. It was argued that these rights were not universally accepted fundamental rights and that they would require the judiciary to decide on budgetary matters, thus breaching the principle of separation of legislative, executive and judicial powers. The South African Constitutional Court rejected this challenge. It did not regard the task of protecting civil and political rights as qualitatively different from that of protecting economic and social rights. The court noted that the proper observance of civil and political rights may have similar budgetary implications to protection of the latter. It stated that, at the very minimum, socio-economic rights can be negatively protected from improper invasion.

The duty of government to protect social and economic rights under the 1996 South African Constitution is defined as one to take reasonable legislative and other measures within its available resources to achieve a progressive realisation of those rights. In other words it is about being reasonable and, unfortunately, we are not seeming to hear from the opposition any understanding of the capacity for reasonableness to apply.

MR SMYTH (Leader of the Opposition) (10.58): I will try to be reasonable. Clause 28 may end up being the most important clause in the whole of the bill, because clause 28 is in fact the enabling clause and at the same time the "governor valve".

Going back to clause 16, I had discussions with the officials about this earlier. It says that everyone has the right to freedom of expression and that that right includes the freedom to seek, receive and impart information and ideas of all kinds. For instance, when you take the issue of, say, paedophilia and the conduct of that sort of information across the internet you could claim as a defence that under 16 (2) you have a right to transmit, receive and impart information and ideas of all kinds. But you have to take it in the context of clause 28, which sets the reasonable limits. Clause 28 is then caught up in enabling, almost, the International Covenant on Civil and Political Rights within this act. Without reading all three together, you run the risk of not understanding what the bill is attempting to do. If you read the Chief Minister's speech when he tabled the bill, you will see that he attempts to make that clear on pages 6 and 7. At the end of that section he says:

> I reiterate, lest there is any confusion on the point, that the bill does not invalidate other territory laws, nor does it create a new cause of action.

If, at any stage, you have the benefit of holding the Attorney-General's speech, the bill and the ICCPR in your hand, perhaps you can understand it if you have taken the time to put the pieces together. My criticism would be that most people do not understand that and often do not read the law in the context of other covenants that might govern the way it is being set up inside our act—and therein lies the problem.

I have been given assurances by the officials that an education campaign will be undertaken with the judiciary—hopefully that will extend to the legal profession—so that people understand the point. They have to interpret the act against the Attorney-General's speech. You really have to do some work to bring all the pieces together. I think that is one of the failings of the bill as such.

If you have the luck to have the bill explained to you by the capable person who wrote it or brought it together and you have the copy of the speech, you know about the ICCPR and you have the act, then it is okay—maybe. The problem is that not all people have the facilities available to them at all times. I had some fears that people might use clause 16 (2) as an excuse to justify anything they might do, but I have been told that there will be a lot of education to ensure that that does not happen. But that is after you ask.

Perhaps the failing of the entire bill is that you have to bring a lot of things together to enable an understanding of it, because it is not clear how this legislation will work. That is why we would be fundamentally opposed to such an act, because these rights and principles are enshrined in other places and we see this as superfluous. However, clause 28 does come out to be a very important clause in the bill and members need to understand exactly what it does in the way it enables the rest of the act to work.

MRS DUNNE (11.02): I have to echo much of what my colleague, Mr Smyth, has said because this is a problem about making all the moving parts fit together. As Mr Smyth has said, in some ways clause 28 is in fact a limiting valve. I will deal with clause 30 at greater length later. The Chief Minister said in his introductory speech in clause 28 that nothing overrides existing laws but, at the same time, clause 30 (3) (b) says that, by working out the meaning of a territory law, you can confirm or displace the apparent meaning of a law.

These are things we have to be particularly concerned about. There are a whole lot of moving parts and, sometimes when the cogs all come together, it is pretty discordant and the gears do not work. A problem will be created for the judiciary and for people throughout the legal system attempting to interpret these laws, because clause 28 says one thing and clause 30 (3) (b) says something slightly different , which is contradictory.

Clauses 28 and 29 agreed to.

Clause 30.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (11.04): Mr Speaker, I move the amendment circulated in my name and table an explanatory statement *[see schedule 4 at page 604]*.

The purpose of these amendments is to make clause 30 easier to read and understand. It is to make it as clear as possible that, while we expect the judiciary to read rights into statutory provisions, they may not override the clear intention of the Assembly to legislate inconsistently with human rights. The amendment to clause 31 includes the words "is as far as possible". This picks up the language used in the United Kingdom Human Rights Act and provides some nuance to the existing clause.

The amendment to clause 2 is a simplification of the language. As ordinary legislation, the Human Rights Act is subject to the Legislation Act 2001 and the rules of interpretation in chapter 14 of that act. Section 139 of the Legislation Act requires that where there is a choice to be made, the interpretation at best achieves the purpose of the legislation of the one to be adopted. This means that, where a human rights consistent interpretation is in conflict with interpretation that achieves legislative purpose, the latter will prevail.

MS TUCKER (11.05): This amendment corrects a potential problem in interpreting the law. In the bill as tabled, there were two potentially conflicting directions, one directing that in interpreting territory laws an interpretation that is consistent with human rights is to be preferred to any other interpretation. That could be a substantive effect of this bill. However, subclause (2) provides that, if there is a conflict between section 139 of the Legislation Act and human rights, that only section 139 is to be applied, and that substantially weakens the effect of subclause (1) because it is either/or.

The amendment, which was also suggested to me by Professor Peter Bailey, directs instead that an interpretation consistent with human rights is preferred as far as possible. The government amendment changes the requirement in subclause (1) to be "as far as possible", and shortens subclause (2) to a reference to the Legislation Act. At the very least this makes it clear but it also allows some scope for shades of meaning.

MRS DUNNE (11.06): I will dwell further on the problem that has been created by clause 30(3)(b). In many ways, clauses 28 and 30 are the teeth of this act.

MR SPEAKER: Why don't you wait until we get to 33B?

MRS DUNNE: No. I am referring to clause 30 (3) (b)—subclause (3) of clause 30. This clause is about the way in which interpreting of the law is to be done. The Attorney-General's amendment goes some way to clarify it, but it does not address the issue of what clause 30 (3) (b) means. We are saying that interpreting law is to be done in a way that is consistent with human rights, as defined in the bill. It is particularly defined by clause 28. It includes confirming or displacing the apparent meaning of the law.

I don't know how this sits in apposition to clause 28 or, looking ahead, to clause 32 (3) (a) as well. There seem to be a whole lot of internal contradictions here. Despite the assurances that the existing law won't be overturned, it appears that it will be interpreted favourably in this bill and interpretation includes, by definition, overturning the current plain meaning. This gives you the possibility for Humpty Dumpty legal advice and interpretation. Suddenly law will not mean what the plain meaning of the law means but what some lawyer or judge, yet undefined, will choose to have it mean on a particular day, depending on what he had for breakfast.

Amendment agreed to.

Clause 30, as amended, agreed to.

Clause 31.

MS TUCKER (11.08): I just want to talk to the clause first before moving my amendment. Clause 31 is important. This clause links interpretation of this bill of rights to the ongoing discussion: the active and growing body of international law on which it is based. By implementing this international declaration in an act, we are connecting also to this body of law. Clause 31(1) states, "International law and the judgments of foreign and international courts and tribunals relevant to a human right may be considered in interpreting the human right." In this bill, human rights are defined as those listed and derived from the International Covenant of Civil and Political Rights. However, it is abundantly clear in the international law that the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights are very much relevant to civil and political rights. I would like to quote again from the *Human Rights Manual*, signed, as I said, by Mr Downer.

I notice that, when Mr Stanhope was referring to Malcolm Fraser, the opposition were being very dismissive and quite insulting saying "old Malcolm". Perhaps Mr Downer also needs to be dismissed as "old Alexander". Mr Downer has certainly been supportive, in theory, of these international covenants. I will read from the manual, for the benefit of those who are interested:

> The Universal Declaration is regarded as the basic cornerstone of the international human rights system and provides the foundation upon which the International Covenant on Civil on Political Rights (ICCPR), the International Covenant of Economic Social and Cultural Rights (ICESCR) and other international legal standards have been developed in relation to freedom from torture and racial discrimination, and the rights of women and children.
>
> The universality and continuing validity of the Universal Declaration were reaffirmed by the international community in the 1993 Vienna Declaration and Programme of Action adopted by the Vienna World Conference on Human Rights, attended by 171 countries.

The Vienna Convention makes the point, quite clearly:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.
>
> Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international level should be universal and conducted without conditions attached. The international community should support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms in the entire world.

As I said, the Australian government is a party to the Vienna Declaration, so it is part not only of an international body of law but also of our national system. Although the bill defines a subset of this indivisible, interdependent set of rights in interpreting the rights, the related rights are to be taken into account. Environment-related human rights, as I said earlier, have also been derived from the civil and political rights, in particular the right to life. The Vienna Declaration includes a statement on this point in relation to toxic substances and intergenerational equity:

> The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Many of our actions, even in the ACT, negatively affect the balance of the systems that support us—climate, air, clean water and biodiversity. Local actions have local and global effects. This is the point of much of the activity at international level. There are also a number of strong statements and declarations linking environmental rights to human rights. The Australian Centre for Environmental Law canvassed the case law and jurisprudence—that is, learned comment and philosophy of the law based on cases and interpretation of covenants. I would like to quote some more from this submission as it is very relevant to the question of relevant material for the purpose of interpreting the human rights as reflected in this bill:

> A human right to a healthy environment has been the subject of much academic discussion and foreign jurisprudence, a significant number of national constitutions, and non-binding international instruments and, most recently and importantly, an international agreement, which was designed to be binding (the Protocol of San Salvador).
>
> The Arhaus Convention in its preamble recognizes that "every person has the right to live in an environment adequate to his or her health and wellbeing." Australia has not acceded the Arhaus Convention and therefore is not strictly bound by its terms. However, in 1998 it was observed that the current international materials on a human rights to a environment "suggest the direction in which international law may be heading" and are therefore "relevant in determining the existence of a normative, if not a legal, right to environment.
>
> Several other non-binding international documents, such as resolutions and declarations, contain variations of an environmental human right. The Hague Declaration of 1989 was one of the most important international statements connecting environmental degradation to human rights issues. It declared that an environmental harm threatens "the right to live in dignity in a viable global environment". Another major development was the 1994 Final Report on Human Rights and the Environment (the 'Ksentini Report') which set out the legal foundations of a right to a healthy, decent and balanced environment. In addition UNEP's 1993 Proposal for a Basic Law on Environmental Protection and the Promotion of Sustainable Development includes within its governing principles "[the] right of present and future generations to enjoy healthy environment and decent quality of life …"

> Finally, foreign jurisprudence may persuade the ACT Legislative Assembly that a human right to a healthy environment should be taken seriously. A right to a healthy environment has already been affirmed by courts in several other countries, including Costa Rica, Argentina, Chile, Ecuador, Peru, India, and Pakistan. In the Philippine case of *Oposa v Secretary of the Department of Environment and Natural Resources*, the Supreme Court held that the constitutional right to a balanced and healthful ecology is a self-evident and actionable human right. Deciding in favour of the plaintiffs, the Court noted that this right "concerns nothing less than self-preservation and self-perpetuation … the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights … are assumed to exist from the inception of humankind." It concluded that "The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment."

I move amendment No 1 circulated in my name *[see schedule 5 at page 605]*.

Subclause (2) reiterates the standard rules for use of extra material in interpreting ACT laws. My amendment would insert a note to make this clear. Although the note does not change the meaning, without it, it looks like (2) (b) is a particularly pernicious restriction on the full consideration and interpretation of human rights. To limit consideration by noting the undesirability of prolonging proceedings without compensating advantage reads like an emphasis on compensation over clarity of the law and justice. This was a particular concern because this act will not provide direct compensation from court cases. Its effect is through drawing attention and, through that attention, to create a sense of obligation in the Assembly and the executive to resolve any threats to human rights.

MR SPEAKER: The question is that Ms Tucker's amendment be agreed to.

Amendment agreed to.

Clause 31, as amended, agreed to.

Clause 32.

MS TUCKER (11.18): I move amendment No 2 circulated in my name *[see schedule 5 at page 605]*.

This amendment would remove subclause 32 (3) (b) which states, "A declaration of incompatibility does not affect the rights or obligations of anybody". I am moving this amendment because I believe this clause goes too far in trying to appease people who are concerned that the bill might have an effect in changing unjust laws or practices. I argue that there is a clear obligation on the Assembly and the executive at the very least to reconsider the legislation or the practice which has led to the statement of incompatibility.

MR STEFANIAK (11.19): I will speak generally on clause 32. The Scrutiny of Bills Committee commented on clause 32. It stated:

> The effect of clause 32, reading sub-clauses 32(2) and (3) together, is to vest a non-judicial power in the Supreme Court of the Territory. The power is non-judicial because the declaration of incompatibility does not affect the rights or obligations of anyone—paragraph 32(3)(b).

> This is quite the reverse of what is taken to be the hallmark of an exercise of judicial power—that is, that it does not affect the rights or obligations of someone. An issue that arises is whether it is competent for the Legislative Assembly to vest such a non-judicial power in the Supreme Court. There is a very complex matter that is not pursued here. One way to pursue the issue is to ask whether the Kable doctrine has the result that the Supreme Court cannot be vested with non-judicial powers that are incompatible with the exercise by the court of the judicial review power of the Commonwealth—see D. Clark, *Principles of Australian Public Law 2003*.
>
> Secondly, the matter might be argued in terms of the ambit of the power to make laws that have been conferred on the Legislative Assembly by the Australian Capital Territory (Self-Government) Act 1988. It might be argued that in this power there is an implicit limit to the effect that it would not be exercised so as to confer on the Supreme Court a non-judicial power, the exercise of which would be incompatible with the exercise by it of judicial power. Whether or not there is any constitutional problem with clause 22, it underlines the point that this power is not one that traditionally has been thought appropriate to confer on a court. The second point to note is that it is likely that there may not be any avenue of appeal from a decision of the Supreme Court acting under clause 32 to any Federal Court including, in particular, the High Court.
>
> This is because the exercise of the power in clause 32 does not involve the adjudication of a matter and/or that there is not involved an exercise of judicial power. Moreover, it may well be that no person holding office as a Federal Court judge could sit on an ACT Court, whether the Supreme Court or Court of Appeal, when that court was called on to exercise the power of clause 32 or to hear an appeal against the exercise of that power. This would be so on the basis that the Federal Court judge will be involved in the exercise of non-judicial power incompatible with his or her office as a Federal Court judge. See the Wilson case above.

MS DUNDAS (11.22): Just briefly, I agree with the amendment Ms Tucker has put forward. It is proper that Assembly members should have some obligation to take action if they are alert to the fact that a new law is infringing the human rights of ACT residents. It is a very important amendment that Ms Tucker is moving and I thank her for moving it.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for Environment) (11.22): The government will not support this amendment. It seeks to provide some clarity and certainty to the effect of the declaration of incompatibility. My advice is—and it is strong advice that I have received from my department and my advisers—that this is an important provision. It is an important safeguard in terms of the meaning or impact or potential impact of a declaration of incompatibility. There are potentially significant implications in not retaining this particular provision as an explanation of the intent and the meaning of the declaration of the incompatibility or what it might lead to or mean. I understand the point that is being made by Ms Tucker, supported by Ms Dundas, but the government cannot support this amendment. I oppose it strongly on the basis of advice to me on its importance in terms of an appropriate interpretation and in order to avoid any doubt around the real effect of the declaration of incompatibility. I regret that the government cannot support this amendment.

Amendment negatived.

Clause 32 agreed to.

Clause 33 agreed to.

Clause 34.

MS DUNDAS (11.24): I seek leave to move amendments 4 and 5 circulated in my name together.

Leave granted.

MS DUNDAS: I move amendments 4 and 5 circulated in my name *[see schedule 1 at page 596]*.

These amendments require the Supreme Court to notify the Commissioner for Human Rights, as well as the Attorney-General, prior to making a declaration of incompatibility so that the commissioner is aware of the legal conflict. As laid out in other parts of this act, part of the commissioner's role is to advise the government on matters relating to the operation of the Human Rights Act, so it is sensible for the commissioner to be kept informed where there are opinions about conflict between the Human Rights Act and other ACT statutes as declared by the Supreme Court. This is not a big burden on the government or as part of this legislation, but I think it is an important communicative channel to open up this clause to ensure that the Human Rights Commissioner is being informed at the same time as the Attorney-General about the Supreme Court declarations.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Community Affairs and Minister for Environment) (11.25): The government is happy to accept these amendments.

Amendments agreed to.

Clause 34, as amended, agreed to.

Clauses 35 to 38, by leave, taken together.

MRS DUNNE (11.26): Scrutiny of bills is an important issue. Mr Stefaniak in his opening remarks earlier today touched on this matter. I will now make the speech that I attempted to make at quarter past six this evening. It will take about two minutes.

This government is proposing another layer of scrutiny when the scrutiny that already exists is being ignored. I came down here today to seek leave to speak again. As the Chief Minister was down here attempting to pass a bill of rights, I was conducting negotiations—I think they are probably called negotiations—with the office of another minister in an attempt to have my rights to the scrutiny of the bill exercised.

There will be a bill on the *Notice Paper*, possibly this week. Although the Scrutiny of Bills Committee has already reported, I referred issues back to it because there were issues that it did not touch on. While this government is here attempting to create another

layer of scrutiny on top of a layer of scrutiny that for the most part works pretty well, another minister in this government or his agents are saying, "No. We're not interested. We don't care about retrospectivity. We don't care whether the Scrutiny of Bills Committee may or may not say anything about the retrospectivity. The most important thing is that we have our way and we get our legislation through without proper scrutiny."

This is what happens all the time. You can stop covering your confusion, Mr Quinlan, and just listen up a bit. Ministers opposite are constantly trying to exercise their muscle to get their way. This government is attempting to ride roughshod over the checks and balances in this small Assembly. It is happening today. At the very time we are debating rights and whether or not you should have scrutiny or extra layers of scrutiny, other ministers in this place are attempting to limit the scrutiny on bills. I think it is worth noting the rights about vigilance and the things that we talked about this morning. Democracy works—not on the feel good, black-letter law but on the hard work of legislators in scrutinising bills, looking at what happens, talking to people to work out the implications and what it might mean to them and talking to and taking advice from officials. When the official gives advice, the question should be asked, "Can I live with that or can't I? Do I need extra advice on this occasion?" Members of the opposition decided that they needed extra advice and went to the Scrutiny of Bills Committee. At the same time this government is trying to ride roughshod over it. This is not how democracy works. This is not how you ensure the rights of people in this place. To the best of our abilities we will stand in the way of people trying to ride roughshod over the full operation of democracy in this place. Democracy and rights are not made by pieces of legislation like this but by the vigilance of every elected member.

MR STEFANIAK (11.30): Firstly, in relation to clauses 35 and 36, I await with interest and perhaps trepidation to see what the Attorney-General is going to do by way of intervention. I think this might just highlight another problem with this bill. In relation to clause 38—considerations of bills by the standing committee of the Assembly—in the scrutiny report on pages 14 through to about 16, the committee comments on this matter. On page 16 it indicates that it does not see its recent approaches as being inconsistent with anything proposed in the consultative committee report or in the explanatory statement, and goes on to give some illustrations.

Quite clearly, anyone who reads the committee's report will see that we look at human rights issues, international conventions and covenants—the works. Again, that brings me to the question: why do we need this bill? I made the point earlier that New South Wales could recommend a good, strong scrutiny committee, modelled on the Senate, with an independent adviser, which we have paid for, to look at human rights issues—which is exactly what we do. It was good enough for them. That is replicated here with the things we are meant to do in clause 38, but we do them anyway. So why do we need this bill? I think that from tonight even blind Freddy can see that the legislation has many potential problems and holes in it. It is real worry. I bring those points to members' attention and commend to them the comments made on pages 14 to 16 of the scrutiny report.

Clauses 35 to 38 agreed to.

Clause 39.

MS TUCKER 11.32): I will be opposing this clause. I believe that it again goes too far in trying to appease critics who do not want an effect to come from this bill. Clause 39 means that if the Attorney-General fails to make a statement on human rights implications of a piece of legislation, there is no consequence for the validity of the law. This applies similarly if the Scrutiny of Bills Committee fails to make a statement. For this bill to have an effect, there must be a dialogue. If the Attorney-General at a particular time in the future does not want to be bothered with human rights, what will the consequences be?

There is always the potential for political consequences when a minister or a committee fails to meet their statutory obligations. This can take account in theory of the particulars of the situation—was it a super urgent bill and there was just no time for human rights? Did the Assembly find that acceptable? If there is no statement, how will anyone know? How would the intent of the legislation relating to human rights be clear? I don't support this clause of no effect on validity of the law. This needs to be a serious and essential part of our law making. It needs to be taken more seriously than the scrutiny reports sadly often are in this case.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.33): The government will not support this amendment. Clause 39 clarifies that, if the Assembly passes a law without the benefit of a statement of compatibility from the minister or a report from the committee, the law will not be invalid. It does not remove the obligation; the obligation remains. This is the same principle as any other saving provision that, for example, prevents a statutory office holder from carrying out their duties because there may have been a defect in the appointment procedure.

Statements of compatibility in committee reports are matters that involve the internal workings of the Assembly. It would be a very radical step indeed to interfere with Assembly procedure in this way. It would mean that someone could challenge the validity of a law simply on the grounds that I, or my successors, could not issue a statement in time or that the committee's report was delayed at the printer. For that reason essentially the government will not support the amendment.

There will be times when legislation must be passed urgently or that other unforeseen circumstances affect the carrying out of these functions. In the real world no-one can control every eventuality, especially where the task is highly complex and involves a number of people. If a future Attorney-General fails to fulfil his or her responsibilities to the Assembly, I am sure the Assembly will respond accordingly and appropriately. For that reason the government cannot support the proposed deletion of the clause.

MS DUNDAS (11.35): I too will be opposing the inclusion of clause 39. Even though the government has put forward some technical reasons why it believes clause 39 has to stay, I think the points have already been made that there will be some situations in the future where people will try to get out of their statutory obligations under clauses 37 and 38 by relying on clause 39.

The Human Rights Bill is limited in scope. One of the few things it does is improve the process for developing new law. If the extra scrutiny mandated by this bill appears to be

optional, then we would be ending up with legislation that could be quite readily ignored, which will undo all the work that we are doing tonight. I support the removal of this clause, as I would see it making the government of the day more vigilant in ensuring that new laws are properly assessed for their impact on human rights, which is what we are trying to achieve this evening.

Clause 39 agreed to.

Clause 40 agreed to.

Clause 41.

MS TUCKER (11.37): I seek leave to move amendments 4 and 5 circulated in my name together.

Leave granted.

MS TUCKER: I move amendments 4 and 5 circulated in my name together *[see schedule 5 at page 605]*. This amendment is consequential on my next amendment, which would extend the feedback loop from the Human Rights Commissioner via the Attorney-General to the Assembly. So I will speak to my next amendment at this time as well.

The Human Rights Commissioner's functions include to review the effect of territory laws, including the common law on human rights, and to report to the Attorney-General on the results of the review. This is a broad responsibility. There are no particular requirements for regular reports and so it is largely up to the commissioner. The commissioner in identifying any problems, or indeed lack of problems, is finding information that is useful, indeed essential, for the Assembly as a whole, if it is taking its human rights obligations seriously.

This part of my amendment amends the clause relating to the reports, so that reports on reviews are in writing. This is preparatory to the next amendment, which is to insert an obligation on the Attorney-General to table such reports in the Assembly within six sitting days of receiving the report. I think without the first amendment making the reports in writing, my second amendment would still make sense, but it does create a paper trail which is useful for accountability. I am talking here about accountability of the responsible minister as to their response to reviews alerting them to problems. Of course, there is nothing stopping the independent Human Rights Commissioner from passing on reports directly to members or publicising their reports. However, it seems very useful to echo the tabling requirements when the Supreme Court makes a declaration and to require the Attorney-General to let the Assembly as a whole know whenever the commissioner has found it necessary to report on human rights aspects of human rights law.

My amendment includes a caveat which allows the Attorney-General to delete any parts of the report which would breach privacy in individuals involved in a case that would otherwise be against the public interest to make public. This is a little similar to the process of dealing with exceptions in FOI reports. If the Attorney-General does make such deletions or alterations, he or she must make a statement to that effect on tabling the report. I hope I will get support for this amendment. It is a small step in a way, but it

ensures that the Assembly is alerted in a timely manner to problems raised by the commissioner, just as it will be made aware of problems raised by the court.

MS DUNDAS (11.39): The Assembly has an essential role in the process established in this bill, which is intended to minimise the instances where human rights are infringed by ACT law and to make everyone aware that this is the case and it does happen. The advice that the Human Rights Commissioner provides a protection of human rights in the ACT would be of great interest and benefit to the Assembly and the wider community. I thank Ms Tucker for putting forward this amendment that would improve our access to advice prepared by the commissioner for the Attorney-General.

Just as we have successfully had the amendment to ensure that Supreme Court determinations are seen by both the Attorney-General and the Human Rights Commissioner, it is important that reports from the Human Rights Commissioner are seen by the Attorney-General and the Assembly. I accept that the privacy of the individual should be respected through this process, and indeed privacy is one of the very human rights that this bill seeks to enshrine. I support the inclusion of clause 1(b) that is to protect individuals. I am also willing to accept public interest exception, though I hope it will not be abused. Political embarrassment should not be used as grounds to invoke the public interest exception.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.40): The government will agree to these amendments.

Amendments agreed to.

Clause 41, as amended, agreed to.

Proposed new 6A.

MS DUNDAS (11.41): I move amendment No 6 circulated in my name, which inserts a new part 6A *[see schedule 1 at page 596]*.

This amendment includes a series of new sections, 41A to 41S, which creates a process for the referral of a complaint to the Human Rights Commissioner where a person believes their human rights have been infringed. The commissioner must investigate the complaint and order conciliation if they think this would help resolve the complaint. If conciliation fails, or is seen as likely to fail, the commissioner must give a statement to the parties involved specifying whether she or he thinks that a human right may have been infringed. The commissioner's annual report must state the number of complaints made and how many cases involved possible infringement of human rights.

The investigation process—in fact the whole complaints process that I am proposing be inserted here—mirrors the process under the Discrimination Act 1991 for discrimination complaints, excepting that the Discrimination Tribunal model has not been copied for the purpose of this amendment so that the finding of the Human Rights Commissioner has exclusively only moral force.

I think it is very important to add this complaints mechanism in the Human Rights Bill, so that people who are hearing about the human rights bill and the bill of rights that we are debating today can take complaints or concerns forward to the Human Rights Commissioner and get an answer. We in the Assembly, through the annual report, can see what people are raising questions about in relation to their human rights.

I think this will be a very important part of the legislation. It provides another mechanism, besides a legalistic process through the Supreme Court, for people to raise concerns about their human rights. I hope the Assembly sees fit to support this amendment. It is not an onerous process that we are setting up, especially as the Human Rights Commissioner is the Discrimination Commissioner. It is a process that mirrors quite closely the Discrimination Commissioner process. This amendment will help the broader community to understand their human rights and give them the opportunity to act upon their human rights.

MS TUCKER (11.44): This amendment will create not only a new path for checking human rights but also a complaints function for the Human Rights Commissioner. There would be no compensation again, but the commissioner could make a statement that they believe that rights have been breached. Investigation by a commissioner, like investigations by the Discrimination Commissioner, would not be conducted according to the rules of evidence. It would be a less formal and less costly means of investigating issues than the courts.

When we are concerned about the rights of people who are socially excluded, it does make a lot of sense to have a more accessible means to have breaches of rights drawn to the attention of the executive and Assembly in the way that this bill wants these issues to be dealt with. The government has argued against this provision on the grounds that a complaints function is very different to the main effect of the rest of this bill, which is essentially about interpretation of laws and internal matters about considering matters when laws are made.

The question for the rest of the bill is whether the law is correctly interpreted, not whether action complies with it. However, in the Human Rights Commissioner's functions there is a broad responsibility to review the effects of territory laws on human rights. The complaints function could be argued to fit within this responsibility, inasmuch as laws govern the operations of departments. It is also similar to the court's power to consider breaches of human rights by laws or actions. There are no direct remedies to the individuals affected beyond a statement that rights have been breached. The main difference is that it is a low cost, accessible and non-legalistic forum.

The other objection put forward to this amendment is that it requires the commissioner to make assessments on legal matters, which are properly the job of the courts. I think the best response to this concern is that there may be issues which are legally complex and which can only be dealt with in the court. However, there are likely to be other issues that are more straightforward and indeed are not amenable to a court case. It makes sense to me to have a forum for investigating and commenting on situations which otherwise may escape notice. A complementary function does not add any obligations or consequences. It is simply filling in the scrutiny and oversight gaps.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.46): The government will not support this proposal. This is a very significant change to the structure of the Human Rights Act and the government does not believe that it fits within the essential structure of the Human Rights Act as conceived and drafted.

The proposal to grant the Human Rights Commissioner a conciliation function would have some significant resource implications for the government. We would have to change quite dramatically the resourcing of the Human Rights Office and of the Human Rights Commissioner, and it would change significantly, quite completely, the nature of the role that the legislation currently invests in the Human Rights Commissioner. It is the view of the government, and it was certainly the view of the consultative committee, that the commissioner not be granted this conciliation function. A complaints function is not consistent with the structure or the nature of the Human Rights Act that is being developed.

The bill or act to be embeds human rights principles across the whole of public administration of the legal system. It has implications therefore for all fields of law and administration—criminal law, defamation law, tort law, medical practice, health law, landlord and tenant—the full gamut of administration and matters that come before the legal system. The impact of the bill will obviously be felt in public and private relations and it will involve the courts in assessing the lawfulness of conduct and where the limits imposed by the Assembly are justifiable. It is the role of the courts to interpret the law and to make binding determinations on questions of lawfulness. All public decision makers under the model as developed, including the courts, tribunals and other statutory office holders will be responsible for interpreting the laws under which they exercise their powers and are to be responsible for exercising them consistently with human rights as far as that is possible.

If this particular amendment proceeds, it essentially provides that, if, for instance, in the view of the complainant a tribunal member or a judge perhaps makes a mistake or an error, the complainant would then go to the commissioner and the commissioner would review a decision of the tribunal or the court; or if, for instance, the magistrate gets it wrong, the person can then just simply proceed to the commissioner.

The government accepted the consultative committee's recommendations to establish the Office of the Human Rights Commissioner, and that has been included in the legislation. We did so because we accepted the importance of the role that an independent body can play in promoting a broader understanding of human rights. That was the recommendation and the government accepted that recommendation in good faith.

The commissioner can look at the effect of any territory law. He or she doesn't have to wait for complaints before she reviews an area of law she is concerned about. The complaint function, we believe, is ill-conceived and would simply overwhelm the commissioner's office and detract from this function, which we regard as the more important function. We believe it would create confusion and constitutional problems and interpose the commissioner in amongst all the existing courts, tribunals and other statutory office holders who all have responsibility to exercise their functions under the

law consistent with human rights. For those reasons the government will not support the amendment.

Amendment negatived.

Clause 42 agreed to.

Proposed new clause 42A.

MS TUCKER (11.50): I move amendment No 6 circulated in my name which seeks to insert a new clause 42A *[see schedule 5 at page 605]*. I spoke to this at the in principle stage, but for members' information this amendment is calling for a review of the act after the first year of operation and asking that the Attorney-General review the first year of operation of this act and present a report of the review to the Legislative Assembly not later than 1 July 2006. The review must include consideration of:

> (a) whether, taking into consideration the 1st year of operation of this Act, rights under the International Covenant on Economic, Social and Cultural Rights should be included in this Act as human rights; and
>
> (b) whether environment-related human rights would be better protected if there were statutory oversight of their operation by someone with expertise in environment protection.

The next paragraph states that this section expires on 1 January 2007. I think that is self-explanatory.

MR STEFANIAK (11.51): The amendment is going to get through because I understand Mr Stanhope is going to support it, but I reiterate comments made by me and by the rest of the opposition in relation to economic, social and cultural rights. The demise of the territory would be brought on that much sooner if this is going to be reviewed within the year and we are going to go down that path. I do, however, also just caution members that a year to review anything is probably not a very long period of time. The UK act took two years before it commenced, and I think it took about 18 months before a few problems emerged there and became apparent. I wonder, Ms Tucker, even though you are going to get support for this, whether a year is time enough to review this. I am somewhat scared by the fact that within about 18 months or two years we might end up with economic rights such as the right to absolutely brilliant health care or things like that which we simply cannot afford. Roll on brave new world.

MS DUNDAS (11.53): I will be supporting this amendment. I think it is important that we review the Human Rights Act after its first year of operation. We are doing something quite groundbreaking here tonight and it is important that we monitor that. There have been a number of points raised through the long debate this evening, not only by the opposition but by the crossbenches, about further issues people would like explored. Whilst this amendment specifies some of those, I would also like to see included in that review some consideration given to a complaints mechanism. I do not know whether the Supreme Court is the best way to go or whether the human rights commissioner feels that there is such a community call for it that we need to look at a broader community complaints mechanism. I am glad to see that we will be reviewing

this act after the first year of operation, and I look forward to reading that review no later than 1 July 2006.

MR STANHOPE (Chief Minister, Attorney-General, Minister for the Environment and Minister for Community Affairs) (11.54): The government will support this amendment. I think it is appropriate that we give the legislation at least a year to settle in. There is an awful lot of work that will need to be done in relation to settling procedures and educating the judiciary, the profession, the public service, and indeed commencing public education campaigns on the implications of the bill as passed tonight. I think it would be appropriate for us to give ourselves a year to settle the existing legislation in and to come to terms with its operation. It will give us an opportunity after a year to look at how it is operating. But, more importantly, and I think we need to separate or distinguish the two, it is important that we allow the legislation some time to operate so that we come to some understanding of it. But I do not think that means that, while we wait for the legislation as passed tonight to settle down, we should not look at other aspects of rights protection. It is quite reasonable to commit ourselves to commence that additional review of other rights that we might include in a year's time, without necessarily disagreeing with Mr Stefaniak about the need to allow the legislation as passed further time to establish itself.

Amendment agreed to.

New clause 42A agreed to.

Clause 43 agreed to.

Clause 44 agreed to.

Schedule 1.

MS DUNDAS (11.55): I will not be moving any more of my amendments because they were consequential and it is not necessary to have the debate twice.

Schedule 1 agreed to.

Schedule 2 agreed to.

Dictionary agreed to.

Preamble agreed to.

Title agreed to.

MR SPEAKER: The question now is that the bill, as amended, be agreed to.

Question put.

The Assembly voted—

Ayes 9		Noes 6	
Mr Berry	Mr Quinlan	Mrs Burke	Mr Stefaniak
Mr Corbell	Mr Stanhope	Mrs Cross	
Ms Dundas	Ms Tucker	Mrs Dunne	
Ms Gallagher	Mr Wood	Mr Pratt	
Ms MacDonald		Mr Smyth	

Question so resolved in the affirmative.

Bill, as amended, agreed to.

Wednesday, 3 March 2004

Postponement of order of the day

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

> That order of the day No 2, executive business, relating to the Dangerous Substances Bill 2003, be postponed until the next day of sitting.

Gaming Machine Amendment Bill 2004

Debate resumed from 10 February 2004, on motion by **Mr Quinlan**:

> That this bill be agreed to in principle.

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

> That the debate be now adjourned.

The Assembly voted—

Ayes 3	Noes 12	
Mr Berry	Mrs Burke	Mr Pratt
Ms Dundas	Mr Corbell	Mr Quinlan
Ms Tucker	Mrs Cross	Mr Smyth
	Mrs Dunne	Mr Stanhope
	Ms Gallagher	Mr Stefaniak
	Ms MacDonald	Mr Wood

Question so resolved in the negative.

Suspension of standing and temporary orders

Motion (by **Mr Stefaniak**) agreed to, with the concurrence of an absolute majority:

> That so much of standing and temporary orders be suspended as would allow private members business order of the day No 22—Gaming Machine Amendment Bill 2004

(No 2)—being called on forthwith and be debated cognately with executive business order of the day No 3, Gaming Machine Amendment Bill 2004.

Gaming Machine Amendment Bill 2004

[Cognate bill:
Gaming Machine Amendment Bill 2004 (No 2)]

MR STEFANIAK (12.04 am): I said quite a bit when I introduced my bill; I will be fairly brief in speaking to the Treasurer's bill. An amendment will be moved as a result of consultation with the Treasurer and government officials. My clause 4 will be put in place of the government's clause 12, and that relates to class B machines.

This bill, the government's bill, does a number of things. First and foremost, though, it does primarily what the opposition bill, which we are debating cognately, does and that is to allow on licence and off licence premises that currently have access to two non-existing class A machines to have access to two class B machines. An on licence premise is basically a tavern, a place that serves liquor but cannot serve takeaway; an off licence is a hotel defined in the act as one that has fewer than 12 rooms for accommodation or has no accommodation at all. In other words, the establishments around town have been entitled to the two non-existent class A machines.

This is a fairly historic moment. This has been a problem that has plagued successive governments for a number of years; it has been with us for about 18 years. I am delighted that a compromise has been reached, that commonsense has prevailed. I would like to acknowledge the efforts of Darcy Henry, who is in the gallery and is a very able spokesman for the taverns. I see some other tavern owners and Pam and John up there. I also acknowledge Jim Shonk, president of the licensed clubs, who had a meeting with me and basically thought that this was a very sensible way out of this imbroglio that has plagued this industry for about 18 years. I also thank the gaming officials and the Treasurer for their commonsense approach to this. It is great to see commonsense finally prevail with a way forward. It does not go as far as I would like—I would like them to have access to class C machines—but it is a good compromise and it is something that virtually all the clubs, the taverns and the hotels are comfortable with.

The government's bill also introduces several new provisions, proposed new sections 14AA and 14AB, setting out what steps anyone who wants to get a new licence has to go through. I am assured by the Treasurer and the government officials that these are not onerous and that regulations will be ready soon. When I saw the period of six weeks mentioned, I thought that realistically that might mean eight or 10 weeks or more before anything happens and machines can be issued. But I was told that I was being a bit conservative and that it should be more like six to eight weeks rather than eight to 12, so, hopefully, there is very much a light at the end of the tunnel for the taverns and the small hotels that have been denied equity for many years—in fact nearly two decades.

The bill also continues the government's regime that every $3 paid to women's sport is counted as $4 towards the community contribution. I have some problems with that, but, having talked to officials in the club industry, although there may well be better ways of doing it, they are reasonably comfortable with that and so we are quite happy to support that provision, although I think it is something we will need to monitor to see just how effective it is. To date it does seem to be going reasonably well.

The initial cap of 5,200 has been extended for another year. That is also important in terms of issues around problem gambling and stopping the proliferation of gaming in the territory. So the opposition will be supporting the government's bill, with the proviso that my clause 4 will replace the government's clause 12 in the bill.

MRS CROSS (12.09 am): The Gaming Machine Amendment Bill 2004, introduced by the government in February this year, contains three substantive elements. Firstly, the bill seeks to extend for another year the cap on gaming machines here in the ACT, as mentioned by Mr Stefaniak. Currently, the total number of gaming machines in the ACT is capped at 5,200. In the past this cap has been reviewed annually. This appears to be the annual review of the gaming machine cap and it looks as though again the current cap will remain unchanged. I am supportive of the cap remaining at 5,200 because, firstly, there has been no evidence to demonstrate that this cap should be lifted and, secondly, the number of gaming machines currently in circulation in the ACT has not reached the 5,200 ceiling yet.

Secondly, the bill seeks to extend the incentive scheme for contributions to women's sport. This is done by allowing every $3 donated to women's sport to be recorded as $4 for community contributions. This scheme resulted in an increase of 39 per cent in donations to women's sport. This is a wonderful result. Women's sport, not just in the ACT but worldwide, needs to be encouraged and supported. Historically, most sports funding has gone to males and male sports. This is particularly true for clubs, which historically have been based around football teams. It is wonderful to see netball, hockey, soccer and women's football teams receiving greater funding because of this scheme. I applaud this and shall be supporting this element of the bill.

The third substantive element of the bill is to allow licensed tavern owners in the ACT access to class B gaming machines and not just the class A machines that are legislated for at present. This will provide greater equity to tavern owners who are licensed but who currently do not have access to any machines because class A machines no longer exist. To allow tavern owners to have access to gaming machines, something they are licensed to have access to, will ensure that they receive more of a fair go than they have in the past. Therefore I will be supporting this element of the bill and Mr Quinlan's Gaming Machine Amendment Bill 2004.

It is also my understanding that we are debating Mr Stefaniak's Gaming Machine Amendment Bill (No 2) 2004 cognately with this bill. The first element of Mr Stefaniak's bill seeks, similar to Mr Quinlan's bill, to ensure taverns become eligible for class B gaming machines. As I stated earlier, this is only fair as taverns are only eligible for and licensed to own class A gaming machines, a class of gaming machine that no longer exists. I do believe Mr Stefaniak's wording is better but I will be supportive of whichever draft is agreed upon and whatever agreement can be reached to ensure tavern owners have access to class B machines and are thus given a fair go. I would like to note, however, that it is important that taverns with gaming machines, no matter which class, contribute to the community in the same manner as do clubs with gaming machines.

Whilst I understand class B machines are low turnover machines, I will be monitoring taverns to ensure that they contribute at appropriate levels to the community. It is my understanding that taverns with gaming machines at the moment do contribute to the

community, but if this does not continue I will be pursuing a future amendment bill that will ensure all licensees are placed on a level footing when it comes to contributing to the community. Therefore it is up to taverns to ensure that they voluntarily contribute significantly to the community or they will soon find that they will be forced to. At the moment some taverns are very vigilant about who they contribute to and at what level they contribute. The Jamison Inn, for example, contributed last year nearly double their gross gaming machine revenue to the community. However, some taverns, such as Olims Canberra Hotel and Symonston Tavern, contributed nothing to the community. If these taverns do not start putting back into the community, we as legislators will need to ensure that minimum levels of contributions are made.

I will not be supporting the second element of Mr Stefaniak's bill that seeks to insert a new section 21A that would allow for the transfer ability of gaming machines between clubs. This would lead to highly predatory behaviour by the bigger clubs which would seek to take over the smaller clubs and transfer the smaller clubs' gaming machines to the bigger, more profitable venues. Smaller clubs are an important institution in the fabric of our society and should be afforded some level of protection. Whilst I am not saying we should subsidise small clubs or in any way keep them financially viable, I do believe we should legislate to ensure they are allowed to operate in a non-predatory environment. Therefore I will not be supporting Mr Stefaniak's clause that would allow for the transferability of gaming machines.

Gaming machines cause and perpetuate many of society's problems but the revenue they raise can also be used to improve society through providing for community infrastructure and assisting those less fortunate in society. Therefore I am supportive of their existence as long as they exist within a tightly regulated framework that ensures that gaming machine revenue contributes in some meaningful and significant way to the ACT and society as a whole. I am encouraged that contributions will also be monitored by Mr Quinlan to ensure that all taverns and hotels contribute fairly to the community in the future.

MS DUNDAS (12.14 am): The Democrats have long held grave concerns about the adverse impacts of gaming machines, particularly on the poor and vulnerable people in our community and their families. We still have to grapple with the good done by minimal community contributions coming from gaming machine revenue and ask whether it is worth the wider cost of the damage done by problem gambling on gaming machines. We recognise that some people do enjoy pokies socially without becoming problem gamblers, so we turn to the question of whether it makes sense to allow some licensed premises to own poker machines and others to be denied licences. We also have to reach a position on the rules governing mandatory community contributions.

The intensive scheme to encourage higher contributions from gambling revenue to women's sport was extensively debated back in June 2002 and at that time the Assembly supported my amendment to place a sunset clause on this provision. As I am sure members are aware, I believe women's sport should be just as well funded as men's sport. We have discussed it extensively in terms of women participating in what are normally seen as men's sports such as AFL and soccer, and I think it is important that women are supported in those sporting activities.

However, I was, along with other members, concerned that women's sport was being put ahead of valuable community programs delivered to other disadvantaged groups in our community, and those concerns remain just as valid now. It appears that the incentive scheme introduced did help address the large discrepancy between the amount donated to men's sport and the amount going to women's sport. However, it did not deal with the issue of whether the balance between sporting contributions and non-sporting contributions was right. I do not think it is, but I also do not think that that problem is going to be fixed today. So I support the provisions of the government's bill to continue the women's sport incentive scheme indefinitely, but I flag that we do need to revisit the problems with the community contributions scheme more widely.

The question of whether businesses other than those operating on a non-profit basis should be granted gaming machine licences was also debated extensively last June in response to Mr Stefaniak's Gaming Machine (Allocation) Amendment Bill. As members may recall from my speech on that bill, I am concerned that the massive growth of large non-profit clubs has put many small businesses out of business. As I said at the time, I was not convinced that two machines in a warren of poker machines in a non-profit club would do less harm to the community than two machines in a hotel or tavern where players are in clear view of other patrons and bar staff and surrounded by people doing things other than gambling.

Although there is still an equity issue in denying class C machines to for-profit businesses, it is possible that a slightly lower level of overall community harm may result from restriction of for-profit businesses to just class B machines. New class B licences allocated must come from within the existing cap of 5,200 machines, which is currently overwhelmingly accounted for by the class C machines that cause greater losses to problem gamblers per machine. So, whilst continuing to harbour concerns about the impact of gaming machines on the ACT community, I am willing to support this part of the bill.

I wholeheartedly support the amendments from the government in relation to harm minimisation when assessing applicants for gaming machine licences. It is proper that new applicants for gaming machine licences should be required to complete a social impact assessment prior to the grant of a licence. I am only sorry that there is no renewal process for existing licences that would require the provision of a similar social impact assessment. I hope this new step gets licensees to take their harm minimisation obligations seriously and I look forward to seeing the content of the government's guidelines when they become available so that we can see exactly what information will be required.

I turn to the government's request that we extend the existing gaming machine cap for yet another year. The government's election promise to deliver a new gaming machine act has been extremely slow in coming to fruition, and I notice that this time we are being asked to delay the expiry of the cap until after the election. In the meantime, we have a Gaming and Racing Commission that lacks the power it needs to properly protect the community from the adverse effects of problem gambling. Poker machine licences are continuing to be released in perpetuity, with no ability for that application to be reviewed, and the commission is unable to remove inappropriate machines from venues.

We need to stop expecting poker machine numbers to rise and rise. We need to manage licences dynamically and empower the commission to cancel and relocate existing licences as they believe is appropriate under new guidelines. In this way, not only can machines be transferred to locations or proprietors most likely to minimise problem gambling, but new areas and new venues can be provided with machines without increasing the total cap. In fact, the number of machines could be aggressively reduced. This is what the ACT Democrats want to see and we hope that the government has the courage to support that idea.

I now turn to the part of Mr Stefaniak's bill which seeks to make it easier for clubs to transfer machines between their premises, and I am opposed to this provision. As has been previously indicated in this chamber, research on problem gambling has shown that there are arguments in favour of restricting gaming machines to town and group centres, where at this stage we find most clubs and most taverns. The Victorian government has moved in this direction by restricting the number of poker machines in the suburbs, particularly near low-income areas. The non-profit clubs have not demonstrated they are concerned enough about the impact of their machines on nearby residents. So I think it is essential that the Gaming and Racing Commission retain the power to determine whether a particular location, and the number of machines at that location, is appropriate. I am concerned that Mr Stefaniak's amendments undo that power, so I cannot accept them.

As I have indicated, I am disappointed that this Gaming Machine Amendment Bill as put forward by the Treasurer is not the legislation that we were hoping for out of the Gaming and Racing Commission review that was released in December 2002. We need to move forward with broader gaming machine reform. There are a number of areas we need to be addressing. Licences is one area that I have addressed tonight. The community contribution scheme is one that has been flagged, and I am disappointed that tonight we are just extending the cap and again tinkering around the edges instead of doing the whole reform process that we have been looking for for so long.

MS TUCKER (12.22 am): This bill was introduced on 10 February, so it is being debated in the next sitting week. This is prompt by any of our standards in this place, which is why I sought to adjourn debate on it. No argument has been put for urgency, and I do not think it is good process at all, but obviously both Labor and Liberal are keen to push this bill along. I know that pubs and taverns have run a very strong campaign for access to gaming machines and that the argument they put is one of equity; that clubs have a guaranteed funding source and an unfair advantage. The position the Greens have taken has been that gaming machines should remain in clubs, although we also recognise that the scale and role of clubs in the ACT have changed considerably over the past years and that their community development functions have faded against their status as entertainment businesses.

I think there is an issue concerning the impact these operations have on other businesses in the ACT, and there is definitely a case to look at exactly how we manage the link between gaming and clubs. Nonetheless, it is not our view that increasing the number of machines or the number of venues for gaming in the ACT is a way of dealing with this inequity.

It is interesting, too, to reflect on the Gambling and Racing Commission review of the Gaming Machine Act last year that identified a number of harm minimisation activities which the government in its wisdom has chosen not to pursue. They include a recommendation to ensure automatic bank machines are not co-located with poker machines, for example, and that licence holders require relicensing every five years. This bill permits taverns and pubs to use class B poker machines, whereas until now they have been limited to class A machines, which have been essentially out of the market.

While the cap itself will not be increased through the passage of this bill, the number of venues in effect will be. A key recommendation of the 1999 Legislative Assembly report on the social and economic impacts of gambling in the ACT was that access to poker machines not be extended until research had been conducted on the current prevalence of problem gambling in the ACT, the relationship between problem gambling and the prevalence of poker machines, and the demographics of hotel customers compared to club members. Only some of that research has been conducted to date.

According to an answer to a question on notice that I put to the Treasurer in the annual reports and committee enquiries, the most recent research specifically on problem gambling conducted by the Australian Institute for Gambling Research estimated 1.9 per cent of Canberra's adult population have a gambling problem. Research more broadly indicates that problem gambling is in part a function of the general level of gambling, and that a key factor in problem gambling, and indeed all gambling, lies in access. I also understand a project currently being conducted by the Australian National University Centre for Gambling Research about gambling machine accessibility and use in suburban Canberra, a detailed analysis of the Tuggeranong Valley, is already pointing at the importance of location to increase gambling. In other words, the nearer the machines are the more likely you are to gamble. Yet the government, with the enthusiastic support of the Liberal Party, is pushing on before this research project has reported, before any more detailed work on the links between problem gambling and increased access and visibility here in Canberra can be commissioned. Researchers have also made the point that there needs to be more work done in the ACT to understand problem gambling within different cultural groups. That work to my knowledge has not been commissioned, but the government are still pressing on with the bill.

Another interesting piece of research which would probably come too late in this process would be on the harm relating to class B machines as opposed to class C machines. The Labor government and the Liberals are allowing taverns and pubs to have access to class B machines, and I understand the argument is for class B rather than C because they are interested in reducing harm associated with the use of those machines. It seems perfectly reasonable then to support the proposal that, if the government and the opposition are so interested in equity, we should make sure that it is class B machines that go to the clubs as well. But that idea does not seem to be getting much support.

I received a letter last year from Marie Bennett from Lifeline, calling on me to oppose this legislation, and I will read some of the letter into the record for the benefit of members:

> I am writing with regard to the proposed Private Members Bill allowing hotels and pubs to install up to 10 poker machines. I urge you, on behalf of Lifeline Canberra and many clients that we see, not to support such a bill.
>
> Lifeline Canberra runs Gambling Care, the only specialized counselling service for people experiencing difficulties with gambling. As you may be aware most people experiencing problems with gambling in the ACT have problems with electronic gaming machines (EGMs). In any year more than 80% of our clients will be EGM players. Our counsellors works with clients to overcome their problems with gambling. In doing so they hear first hand of the incredible hardship and distress which problem gamblers and their families face. Many of our clients tell us that they have contemplated suicide as a way out of their gambling problems.
>
> … … … … …
>
> A significant factor in development of problem gambling can be attributed to an increase in accessibility of gaming machines. Introduction of poker machines to hotels and pubs or to the casino would increase accessibility and would also increase the number of people who develop problems with gambling. **Lifeline Canberra opposes the introduction of poker machines outside Clubs.**

If we had had a little longer before this debate came on, I might have had a chance to harness more debate and opposition to this bill and perhaps encourage support from the Labor Party rank and file who supported a resolution at their 2002 conference opposing any further expansion of poker machines outside of licensed clubs, which I would argue that this bill does. It seems, however, that the Labor government has chosen to push this bill through quickly.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism and Minister for Sport, Racing and Gaming) (12.28 am), in reply: First of all, I think it needs to be stated that taverns are permitted poker machines at present. It is simply the case that the ones that they are permitted are not available, through technological change, and it makes sense to make the minimal adjustment to allow taverns to resume their original position.

In response to some of the comments that were made about numbers of poker machines, I recommend to members a reading of the Productivity Commission report, which says that prohibition, unless it is absolute prohibition, is not the answer; reducing the number of machines is not the answer. What is the answer is the education and the code of practice. The code of practice that exists in the ACT has been recognised as being the strongest code of practice in Australia, if not the Western world. So I think that is the way we must go, and I do hope the Democrats will have the courage to face the facts in relation to how we must address problem gambling.

As members have mentioned, the bill also maintains the cap, and I think that is reasonable, although I think the arbitrariness of the cap will be a problem one day. Unless things change, the town will grow and, unless we have wiped out poker machines, areas such as North Gungahlin will not be able to establish a club because the cap will be reached and no more machines will be allowed. So we will have a sort of arbitrary go/no go area. The cap is intuitively acceptable but, like a number of things that come before this place, it is just a little naive and a little simplistic as an approach.

I am pleased for the support of the initiative in relation to women's sport. It is something that I went to the last election with and I would say that it has had modest success but we still have a way to go. The government has on other fronts moved to support women's sport and to ensure that it is treated equally in terms of grants and support given. That has not always been the case.

The bill requires that applications for gaming machines must be accompanied by a social impact assessment. That is a genuine provision and that provision will be applied. We will not be supporting the mobility provisions in Mr Stefaniak's bill. I cannot imagine towing these things around on the back of a trailer and deciding which night is a good night to go where. I think that part might need a little bit of work. I would like to think that when a poker machine licence is given and a social impact statement has been provided to support that, it is provided to a location. I do not even agree with a club that has two or three outlets being able to transfer a machine between those areas, because that would advantage three connected establishments over three separate independent establishments, possibly otherwise in the same situation. We need an even playing field.

I thank members for the support, such as it is, and we will accept Mr Stefaniak's first amendment, which, I think, at this stage brings in only one premise; we missed one and that was purely an oversight. The new definition is just a little bit more comprehensive and does what we intended. But we cannot accept the other change.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 11, by leave, taken together and agreed to.

Clause 12.

MS TUCKER (12.34 am): I will be opposing this clause for the reasons I have already stated.

MR STEFANIAK (12.34 am): I move amendment No 1 circulated in my name *[see schedule 6 at page 606]*. As has already been discussed, this amendment enables both on licences for taverns and off licences, hotels that either have fewer than 12 residential rooms or no rooms, to have access to two class B gaming machines.

MS TUCKER (11.34 am): I will not be supporting this amendment either, for the reasons I have already stated.

Question put:

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

The Assembly voted—

Ayes 13		Noes 2
Mrs Burke	Mr Pratt	Mr Berry
Mr Corbell	Mr Quinlan	Ms Tucker
Mrs Cross	Mr Smyth	
Ms Dundas	Mr Stanhope	
Mrs Dunne	Mr Stefaniak	
Ms Gallagher	Mr Wood	
Ms MacDonald		

Question so resolved in the affirmative.

Amendment agreed to.

Clause 12, as amended, agreed to.

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

Bill, as amended, agreed to.

Gaming Machine Amendment Bill 2004 (No 2)

Debate resumed from 11 February 2004, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

MR STEFANIAK (12.39 am): What we have left now is clause 5 of my original bill, now that clause 4 has become clause 12 of the Gaming Machine Amendment Bill that we have just voted in favour of. As members have indicated that they will be opposing that clause, I can read the numbers, so we can simply call the vote and that is that.

Question put:

> That this bill be agreed to in principle.

Question resolved in the negative.

Adjournment

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

> That the Assembly do now adjourn.

The Assembly adjourned at 12.40 am (Wednesday).

Schedules of amendments

Schedule 1

Human Rights Bill 2003

Amendments moved by Ms Dundas

1
Clause 5, definition of *human rights*
Page 4, line 4—

after

civil and political rights

insert

and economic, social and cultural rights

2
Part 3 heading
Page 5, line 1—

omit the heading, substitute

Part 3 Human rights

Division 3.1 Civil and political rights

3
Proposed new division 3.2 and 3.3 heading
Page 13, line 8—

insert

Division 3.2 Economic, social and cultural rights

Note The primary source of these rights is the International Covenant on Economic, Social and Cultural Rights.

27A Right to adequate standard of living

Everyone has a right to an adequate standard of living for themselves and their families, and to the continuous improvement of living conditions.

Examples

a right to adequate food, clothing and housing

27B Freedom from hunger

Everyone has the right to be free from hunger.

27C Right to health

Everyone has the right to enjoy the highest attainable standard of physical and mental health.

27D Right to take part in cultural life

Everyone has the right to take part in cultural life.

27E Right to education

(1) Everyone has the right to education.

Example

the right to education directed to the full development of the human personality and the sense of its dignity

(2) Parents or other legal guardians of children have the right to choose schooling for their children that ensure their children's religious and moral education is consistent with their own convictions.

(3) However, the right to choose schooling under subsection (2) is limited to the right to choose schooling that complies with any minimum educational standard of schooling required by law.

27F Right to work

(1) Everyone has the right to have work, including a right to the opportunity to gain a living by work freely chosen or accepted by the person.

(2) Everyone has the right to the enjoyment of just and favourable conditions of work.

Examples

a right to paid maternity leave

special protection of young people in the workforce

27G Right of self-determination

All peoples have the right of self-determination.

Example

People may freely decide their political status and freely pursue their economic, social and cultural development.

Division 3.3 Limits on human rights

4
Clause 34 heading
Page 16, line 14—

omit the heading, substitute

34 Notice to Attorney-General and commissioner

5
Clause 34 (2) and (3)
Page 16, line 19—

omit clause 34 (2) and (3), substitute

(2) The Supreme Court must not make the declaration unless the court is satisfied that—

(a) notice of the issue has been given to the Attorney-General and the human rights commissioner; and

(b) a reasonable time has passed since the giving of the notice for the Attorney-General and commissioner to decide whether to intervene in the proceeding.

(3) For subsection (2), the Supreme Court may direct a party to give notice of the issue to the Attorney-General and human rights commissioner.

6
New part 6A
Page 20, line 15—

insert

Part 6A Human rights complaints

41A Meaning of *party* for pt 6A

In this part:

party, in relation to a complaint or an investigation under section 41J (1), means—

(a) the complainant (if any); and

(b) the respondent; and

(c) in relation to a complaint before the commissioner—any person joined by the commissioner under section 41P.

41B Complaints about contravention of human rights

(1) A complaint that a person has done an act that contravenes a human right may be made to the human rights commissioner by—

(a) a person aggrieved by the act; or

(b) an agent acting on behalf of 1 or more people aggrieved by the act.

Note If a form is approved under s 41S for a complaint, the form must be used.

(2) A person may act as an agent only if the person is—

(a) authorised in writing to act on behalf of the aggrieved person or people concerned; or

(b) authorised by the human rights commissioner to act on behalf of an aggrieved person who, in the opinion of the commissioner based on reasonable grounds, is unable to make a complaint or authorise an agent to act.

(3) Two or more people may make a complaint jointly.

41C Investigation of complaints

The human rights commissioner must investigate a complaint made under section 41B to decide—

(a) whether the complaint can be dealt with under this part; and

(b) whether the commissioner may dismiss the complaint; and

(c) if the complaint can be dealt with and the commissioner does not dismiss it—

(i) whether resolution of the complaint by conciliation between the parties is reasonably likely; and

(ii) whether a human right has been contravened; and

(iii) if the commissioner is satisfied on reasonable grounds that a human right has been contravened—whether the contravention is authorised by law.

41D Notice of investigation of complaint

Before beginning an investigation of a complaint, the human rights commissioner must give each party written notice that the complaint is to be investigated.

41E Conduct of investigations

(1) An investigation is to be conducted in the way the human rights commissioner considers appropriate, subject to any requirement under this part.

(2) An investigation is to be as simple, quick and inexpensive as is consistent with achieving justice.

(3) In conducting an investigation of a complaint, the human rights commissioner—

(a) must thoroughly examine all matters relevant to the investigation; and

(b) must, subject to this part, ensure that each party is given a reasonable opportunity to present his or her case; and

(c) is not bound by the rules of evidence.

(4) The human rights commissioner may give the directions about the procedure to be followed in an investigation and do everything that the commissioner considers necessary or desirable for the quick and just finishing of the investigation.

41F Stale complaints

(1) This section applies if—

(a) the human rights commissioner makes a request of a complainant; and

(b) the complainant does not, within 3 months after the day the request is made, adequately respond to the request.

(2) The human rights commissioner may, but need not, dismiss the complaint by written notice to the parties.

41G Single investigation of several complaints

The human rights commissioner may conduct a single investigation of 2 or more complaints that arise out of the same or substantially the same circumstances or subject matter.

41H Representative complaints

The human rights commissioner may deal with a complaint as a representative complaint if the commissioner is satisfied that—

(a) the complainant is a member of a class of people the members of which have, or are reasonably likely to have, grievances against the respondent; and

(b) the material facts of the complainant's grievance are the same as, or similar or related to, the material facts of the grievances of other members of the class; and

(c) common questions of law or fact arise, or would arise, in the investigation of complaints that have been, or could be, made by other members of the class in relation to those grievances.

41I Ordinary complaints not prevented by representative complaints

Section 41H does not prevent a person from making a complaint about a grievance that is the subject of a representative complaint.

41J Investigation without complaint

(1) The human rights commissioner may on his or her own initiative investigate conduct that appears to the commissioner to contravene a human right.

(2) An investigation under subsection (1) must, as far as practicable, be conducted as if it were an investigation of a complaint.

41K Dismissing complaints

(1) If, because of the investigation of a complaint made under section 41B, the human rights commissioner decides that a relevant ground for dismissing the complaint exists, the commissioner must dismiss the complaint.

(2) For subsection (1), the following are ***relevant grounds*** for dismissing a complaint:

(a) the complaint is frivolous, vexatious, misconceived or lacking in substance or was not made honestly;

(b) the complaint relates to an act, or the last in a series of acts, that took place more than 1 year before the complaint was made;

(c) the matter complained about is not a contravention of a human right;

(d) the matter complained about has already been adequately dealt with by the human rights commissioner (whether under this Act or the *Discrimination Act 1991*);

(e) the matter complained about has already been adequately dealt with otherwise than by the commissioner;

(f) the complainant does not want the complaint investigated;

(g) having regard to the complaint and any other relevant matter before the commissioner, in the commissioner's opinion it is not necessary to pursue the complaint.

(3) If the human rights commissioner dismisses a complaint under subsection (1), the commissioner must give written notice of the decision to the parties no later than 60 days after the day the complaint was made.

(4) A notice under subsection (3) given to a complainant must tell the complainant about any further action he or she may take about the grievance on which the complaint was based.

Example

The complainant may be able to take action in relation to the grievance through the court system, for example, through review of an administrative decision.

41L Compulsory conferences

(1) The human rights commissioner may, in writing, require the following people to attend a conference presided over by the commissioner:

(a) a party to the investigation of a complaint;

(b) anyone else the commissioner believes on reasonable grounds is likely to be able to provide information relevant to the investigation or whose presence at a conference is likely to assist in the proper resolution of the complaint.

(2) A requirement under subsection (1) must state the time and place for the conference.

(3) A conference must be held in private and is to be conducted in the way the human rights commissioner considers appropriate.

(4) Except with the human rights commissioner's consent—

(a) an individual is not entitled to be represented at a conference by someone else; and

(b) a body is not entitled to be represented at a conference by a person other than a member, officer or employee of the body.

(5) Evidence of anything said or done during conciliation in relation to a complaint is not admissible in any proceeding.

41M Conciliation

(1) If, during or after investigation, the human rights commissioner decides that it is reasonably likely that a complaint may be resolved by conciliation, the commissioner must—

(a) tell the parties about the commissioner's opinion; and

(b) try to resolve the complaint by conciliation.

(2) Evidence of anything said or done during conciliation in relation to a complaint is not admissible in any proceeding.

41N Conduct of conciliation

Conciliation is to be conducted in the way the human rights commissioner considers appropriate.

41O Conciliation unlikely or unsuccessful

(1) This section applies if—

(a) after investigation of a complaint, the human rights commissioner forms the opinion that resolution of the complaint by conciliation between the parties is not reasonably likely; or

(b) conciliation of the complaint has been unsuccessful.

(2) The human rights commissioner must—

(a) if subsection (1) (a) applies—tell the parties in writing about the commissioner's opinion; and

(b) tell the complainant in writing—

(i) whether the commissioner has formed an opinion that the grievance on which the complaint was based arose from a contravention of a human right; and

(ii) if the commissioner has formed that opinion—whether the contravention was authorised by law; and

(iii) about any further action the complainant may take about the grievance; and

(c) dismiss the complaint.

Example for par (b)

The complainant may be able to take action in relation to the grievance through the court system, for example, through review of an administrative decision.

41P Joining parties

(1) This section applies if before the beginning of an investigation, or at any stage during the conduct of an investigation, the commissioner is satisfied that a person ought to be joined as a party to the investigation.

(2) The commissioner may, by written notice given to the person, join that person as a party to the investigation.

41Q Discrimination commissioner may act on complaint

To remove any doubt, this part does not prevent the discrimination commissioner from acting under the *Discrimination Act 1991*, section 80 (Investigation without complaint).

41R Annual report

A report prepared by the human rights commissioner under the *Annual Report (Government Agencies) Act 2004* for a financial year must include details of the following:

(a) the number of complaints made under this part during the year;

(b) the number of complaints resolved by conciliation during the year;

(c) the number of complaints the human rights commissioner considers may involve contravention of a human right during the year;

(d) for each complaint mentioned in paragraph (c)—which human right the commissioner considers may have been contravened and whether the contravention was authorised by law.

41S Approved forms

(1) The human rights commissioner may, in writing, approve forms for this Act.

Note For other provisions about forms, see Legislation Act, s 255.

(2) If the human rights commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

(3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

7
Schedule 1 heading
Page 22—

omit the heading, substitute

Schedule 1 Sources of human rights

(see pt 3)

ICCPR source of human rights

8
Schedule 1, new part 1.2
Page 23—

insert

Part 1.2 ICESCR source of human rights

column 1 item	column 2 section	column 3 description	column 4 ICESCR article
1	27A	right to adequate standard of living	11 (1)
2	27B	freedom from hunger	11 (2)
3	27C	right to health	12 (1)
4	27D	right to take part in cultural life	15 (1) (a)
5	27E	right to education	13 (1) and (3)
6	27F	right to work	6 (1), 7, 10 (2) and (3)
7	27G	right of self-determination	1 (1)

9
Dictionary, new definition of *ICESCR*
Page 27, line 4—

insert

ICESCR means the International Covenant on Economic, Social and Cultural Rights.

10
Dictionary, definition of *international law*, paragraph (a)
Page 27, line 6—

after

Political Rights

insert

, the International Covenant on Economic, Social and Cultural Rights

11
Dictionary, new definition of party
Page 27, line 11—

insert

party, for part 6A (Human rights complaints)—see section 41A.

Schedule 2

Human Rights Bill 2003

Amendment moved by Mr Stefaniak

1
Clause 9 (2)
Page 5, line 22—

omit the subclause 9 (2)

Schedule 3

Human Rights Bill 2003

Amendments moved by Mr Stefaniak

1
Proposed new clause 12A
Page 6, line 27—

insert

12A Right to safety and security

Everyone has the right to safety and security.

Note The source of this right is the United Nations' Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

2
Proposed new clause 12B
Page 6, line 27—

insert

12B Right to own property

(1) Everyone has the right to own property, either alone or with others.

(2) No-one may be deprived of his or her property, except in accordance with law.

Note The source of these rights is the United Nations' Universal Declaration of Human Rights.

Schedule 4

Human Rights Bill 2003

Amendment moved by the Attorney-General

1
Clause 30 (1) and (2)
Page 14, line 6—

omit clause 30 (1) and (2), substitute

(1) In working out the meaning of a Territory law, an interpretation that is consistent with human rights is as far as possible to be preferred.

(2) Subsection (1) is subject to the Legislation Act, section 139.

Schedule 5

Human Rights Bill 2003

Amendments moved by Ms Tucker

1
Clause 31 (2), new note
Page 15, line 13—

insert

Note The matters to be taken into account under this subsection are consistent with those required to be taken into account under the Legislation Act, s 141 (2).

2
Clause 32 (3)
Page 15, line 25—

omit clause 32 (3), substitute

(3) The declaration of incompatibility does not affect the validity, operation or enforcement of the law.

3
Clause 39
Page 19, line 1—

[oppose the clause]

4
Clause 41 (1) (a)
Page 20, line 9—

after

report

insert

in writing

5
New clause 41 (1A) to (1C)
Page 20, line 13—

insert

(1A) The Attorney-General must present a copy of a report mentioned in subsection (1) (a) to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the report.

(1B) However, the Attorney-General may amend the report (including by omitting part of the report) before presenting it to the Legislative Assembly to prevent the report—

(a) disclosing the identity of—

(i) a person whose human rights have, or may have been, contravened; or

(ii) someone who may have contravened someone else's rights; or

(b) allowing the identity of someone mentioned in paragraph (a) to be worked out; or

(c) disclosing information if the disclosure of the information could, in the Attorney-General's opinion, harm the public interest.

(1C) If the Attorney-General amends the report, the Attorney-General must present a statement to the Legislative Assembly with the report that tells the Assembly that the report has been amended.

6
New clause 42A
Page 21, line 5—

insert

42A Review of Act after 1st year of operation

(1) The Attorney-General must review the 1st year of operation of this Act and present a report of the review to the Legislative Assembly not later than 1 July 2006.

(2) The review must include consideration of—

(a) whether, taking into consideration the 1st year of operation of this Act, rights under the International Covenant on Economic, Social and Cultural Rights should be included in this Act as human rights; and

(b) whether environment-related human rights would be better protected if there were statutory oversight of their operation by someone with expertise in environment protection.

(3) This section expires on 1 January 2007.

Schedule 6

Gaming Machine Amendment Bill 2004

Amendments moved by Mr Stefaniak

1
Clause 12
Page 6, Line 5

Omit Clause 12 and substitute

12 Conditions for issue of licences—gaming machines
Section 18 (2) and (3)

substitute

(2) A licence must not be issued for premises to which a general licence or on licence applies except for class B gaming machines.

(3) A licence must not be issued for premises to which a general licence applies—

(a) if the premises contain at least 12 rooms that are for use as residential accommodation for lodgers—for more than 10 gaming machines; or

(b) if the premises do not contain rooms that are for use as residential accommodation for lodgers, or contain less than 12 of those rooms—for more than 2 gaming machines.

(4) A licence must not be issued for premises to which an on licence applies for more than 2 gaming machines.

(5) A licence must not be issued for premises to which an on licence applies unless the on licence is stated to be for the primary purpose of running a tavern/bar.