DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

FIFTH ASSEMBLY

WEEKLY HANSARD

13 MAY

2004

Thursday, 13 May 2004

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The Assembly met at 10.30 am.

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

Chief Minister
Motion of want of confidence

MR SMYTH (Leader of the Opposition) (10.34): I move:

> That, since the Chief Minister has repeatedly misled the Legislative Assembly on the question of advice given to him and contact made with him during the period 17-18 January 2003 regarding the 2003 bushfires, this Assembly no longer has confidence in the Chief Minister, Mr Jon Stanhope MLA.

Mr Speaker, this Assembly has been misled. It has been repeatedly misled by the Chief Minister of the ACT. We are not here today to debate whether the Assembly was misled, because that fact has already been conceded; we are here to debate the excuse that the Chief Minister offers. We need to decide whether his excuse meets the high standards of accountability required of ministers. This is no small responsibility; nor, as it has been asserted, is it merely a political issue for the 17 members here today. In deciding this question the Assembly will be setting standards that will directly affect the quality of government in Canberra into the future. By 'government' I mean government not just by ministers, but also by this Assembly, because today the Assembly will decide whether it will allow itself to operate in a climate where ministers can mislead it and get away with it.

The Chief Minister's excuse is not adequate; in fact, his excuse is not even credible. Claiming memory loss to avoid being accountable for your actions is a shallow technique that attracts widespread community derision. The Chief Minister's comments are helping to keep the reputation of politicians at their sadly low level. His memory problems are being discussed and parodied in homes, workplaces and shopping centres throughout the city and, I suspect, throughout the country. One story related to me last weekend tells of two ladies who came out of a supermarket queue. One suddenly said to the other that she had forgotten to buy the cream, and her friend replied, "Oh my! You've got Chief Minister's disease!" And they both laughed and walked off. That is at the heart of what is happening.

I sat in the stand on Anzac Day, as did many of the members here, as Mr Stanhope was announced to come forward and lay a wreath. As he approached the Stone of Remembrance, one digger in the grandstand was heard to say, "Well, at least he's remembered to do something!"—and a ripple of laughter ran through the crowd. That was three weeks ago—before the current scandal came to light. But the issue is being taken much more seriously by those who lost homes, livelihoods and even loved ones on January 18, 2003. To many people the Chief Minister's position is little short of contemptible.

We need to recognise that the current Chief Minister has lost substantial credibility and standing through this affair. That in itself is a serious matter for him but more so for us. The question, "What if we had been warned?" resonates among thousands of Canberrans. There is a strong undercurrent in this community that in some way this government failed them by not warning them. No-one has yet been able to pin down the truth, but the sense that they were failed by their leaders remains. The Phoenix Association wrote to me a few days ago. A single short paragraph of their letter sums up this mood. It says:

> As they think "What if…?", they will again wonder why they were not warned. Not to know the answer will make them feel hurt and frustrated. To think that there is someone who knows the answer, but will not disclose it, will deepen the hurt…

And that turns frustration into anger. We need to answer that need and we, as community leaders, need to make political sacrifices, if necessary, to spare from further torment those who have already lost so much. Yet, by his continuing political defence, the Chief Minister is choosing his own selfish needs over those of others.

This Assembly has some power to override Mr Stanhope's personal failings and do right by the people of Canberra. We are here today to subject the Chief Minister to the very high level of scrutiny that a parliament should apply to ministers. Our obligation is to protect this institution—the Assembly—by acting with just but relentless discipline. As I have said, the fact that this Assembly has been misled is not in dispute. On several occasions Chief Minister Stanhope led this Assembly to believe that no contact had taken place between him and the officials of our emergency services between the very unusual cabinet meeting on Thursday 16 January and around 12.40 pm on Saturday 18 January, a gap of two days.

This fact was highly important for the minister's political standing. He has used this claim on countless occasions to avoid the people of Canberra accusing him of neglect. If the public knew that he had more advanced knowledge, there would be little excuse for the failure of leadership and public warning that took place that day. By denying such knowledge, Mr Stanhope acted to protect his political reputation and protect his own personal position. No other public purpose and no-one else's interests were served when he clothed himself in the illusion of ignorance.

Indeed, we need to recognise that this level of ignorance is unacceptable in the holder of a vital public office at a time of public emergency. The picture Mr Stanhope presented over more than a year is not the true picture. Mr Stanhope has misled the Assembly, as he has perhaps misled the inquiry of the Coroner's Court and as he has misled the people of Canberra, because we now know that there was communication between Mr Stanhope and his officials. The stories told to the coroner leave an overwhelming impression, despite the amnesia defence being put up, that this communication did advise him on the state of the fires and create for him the opportunity—and the obligation—to show leadership.

What emerges from this story is that this Chief Minister failed to do his part to communicate adequately with his officials and carry out the essential elements of his ministerial duty which, on those days, included being Minister for Police and Emergency

Services. Then, to conceal these failings, he willingly misled the public—just like so many other flawed politicians who have been brought to justice by the scrutiny of parliaments.

This is the first occasion on which the full story of Mr Stanhope's actions—actions that led him to mislead the Assembly—is being debated in this place. The story does not begin on January 18, 2003; it goes back to the preceding year. Bushfires that were then considered remarkable struck the ACT at Christmas 2001. The Stanhope government had recently come to office and Mr Quinlan was the minister for emergency services. Significant amounts of public property were destroyed in that fire. The fires led to a coronial inquiry that was still underway the following summer. As this government went into the summer of 2002 it had no grounds for treating bushfire as a distant political problem.

With a second drought summer the indications for bushfires were stronger than ever. As many of us know all too well, Voices in the Wilderness had been warning that the ACT's bushland was growing more fire prone with every passing year. The wake-up call came in December—at Christmas 2001. In early December 2002 Mr Stanhope reshuffled his ministry and Mr Wood became emergency services minister. New relationships were urgently needed between ministers and senior officials. The people of Canberra were entitled to expect that Mr Wood receive thorough preparation from his emergency services officials.

Then, on 8 January 2003, lightning struck. We now know the history of the development of the fires in the days that followed. We have all seen the explosion of colour on the time series maps. We know that firefighters realised very quickly that what was happening was a problem of alarming potential. And we know, tragically, that the effort to tackle the fire was failing. Whatever fault may be found in individuals—and we will leave that scrutiny to the coroner—there could be no doubt that the situation was slipping rapidly out of control.

By Thursday 16 January the ministers of this government were all too well aware of what was happening. At a historic and perhaps unprecedented special meeting of cabinet they were briefed by the city's senior officials. Apparently it was Mr Wood rather than the Chief Minister who summoned this meeting, possibly at the suggestion of the chief executive responsible for community safety—Mr Keady. This in itself is highly significant. The accounts we have been given show Mr Stanhope as more of a passenger than the captain—an element of his character and his behaviour that has led us to this debate today, as we shall see.

The ministers have since given differing accounts of the meaning this cabinet meeting held for them. In some ways their different explanations are about divesting themselves of any appearance of fault. But two things are clear: firstly, the ministers were thoroughly advised of the developing disaster and of the need for leadership. The second thing that is clear is that the ministers did nothing—nothing at all. We are told that this is because they saw nothing additional that they could do.

To avoid the impression of complete neglect we have been told that, at this meeting, the ministers moved into some heightened state of readiness. But what exactly are we to take this to mean? It must mean, at the very least, that the minister for emergency services

was on constant watch; that the Chief Minister understood that he might be called on at any moment to issue a historic state of emergency declaration and that this was a time, unlike any other in the city's history, when political leaders might be called upon to show community leadership. Then suddenly, disastrously, that leadership went missing.

On the afternoon of Friday the 17th, as the lead officials in both ACT and NSW firefighting were facing the truth about the inevitable disaster, the minister for emergency services, Mr Wood, took leave. Ministers do need to take leave, and January is generally a good time to take it, but what can we say about this timing? Whatever one thinks of this decision—and I will not dwell on it—the role of the emergency services minister needed to pass swiftly and professionally to an acting minister. Never, since self-government, had a Chief Minister been so acutely burdened with the responsibility of ensuring that this key ministerial role was not just being filled but carried out with diligence and competence. Mr Quinlan seems to have been considered—he had been the minister for a year until just a few weeks beforehand—but he was taking leave to go to Melbourne to watch the Australian Open. So, fatefully, Mr Stanhope himself became the acting minister for emergency services.

It is in this role that Mr Stanhope clearly failed. As we shall debate today he failed to fulfil the vital ministerial responsibilities of emergency services minister in the brief space of time he held that role. Ever since he has led the people of Canberra down a path of obfuscation, denial and memory loss to try to cloud over the events of that period and avoid responsibility for his lack of action. We must remember that, from the day of the fires, the one great cause of anger in this community—which in other ways has rallied without recrimination—has been the demand to know why they were not warned. The man in the key position to decide that they should be warned—perhaps the one man with the capacity to get that warning on the airwaves in time—has hidden from that demand. In fact, the acting minister has worked so hard to create the impression that he could not have warned the public, because he did not know, that he has asked us all to believe an entire series of amazing acts of miscommunication and neglect of his ministerial duty.

He tells us that, from the time he became minister on Friday 17 January, he did not believe that the danger from the fires warranted him to seek any information about how they were progressing. Nor did he attempt to contact any member of the leadership of the emergency services, even though he already had a working relationship with the chief executive, Tim Keady, through his role as Attorney-General. He would have us believe it was reasonable that those officers did not alert him in any way, and that such a culture of not being told was acceptable to him. Indeed, he has repeatedly told us that he took no action, nor made any communication, until 12.40 on Saturday 18 January when he decided of his own initiative to drive to the emergency services headquarters. Indeed, he would have us believe that he did this even without calling anyone, or anyone calling him first.

That story alone portrays a serious neglect of duty. In several points it does not make sense, and in key points we now know that it is simply not true. We now know that on the Friday evening, at around 7.14 pm, as the reality of the collapse of the fire defences in the bush was occupying all his thoughts, the director of emergency services, Mike Castle, rang his acting minister. The phone call was not answered, so Castle left six seconds of message—or silence—on the Chief Minister's message bank. Mr Stanhope

now claims that he can remember nothing about this call, or returning the call, except that—absurdly—he recalls that it contained no words. We do not know what words it did contain, but it was most unlikely to be silence.

Most Canberrans believe that the message went something like this—if members look at the second hand on a clock, six seconds is a long time on a message bank when you could most reasonably say, without any effort at all—"Minister, this is Mike Castle. Please call me back. It's urgent." Whatever the words were, how could they not have conveyed the clear impression that the director sought to speak to his minister in a time of crisis? How can the message not have prompted a responsible minister, in a time of crisis, to respond? Indeed, if he had the miscall and he recognised it as Mr Castle's number, how can he not have chosen to ring back—or decided not to ring back?

Here we have a very thorny problem for the acting minister. If he did not return the call, he was clearly neglectful in his duty. Yet if he did return it, then he has lied to everyone and a crucial phone call remains to be revealed.

We can only speculate as to what might have happened differently if Mr Stanhope had called Mr Castle back. It is interesting to look at where Mr Castle was at that time. From the minutes of the emergency services meeting at that point, Mr Castle would have been at a meeting that had just been told that the fire was expected at Duffy by 8 o'clock the following evening. That is the determination in those minutes. If you had a message like that to give to the Chief Minister, you would have rung a second time. I would conclude that Mr Castle did not have to ring back a second time because he got to the Chief Minister the first time.

We can only speculate as to what might have been done differently, what might have happened, had the minister risen to the role of minister and taken a new direction. Might he and Mr Castle have discussed a warning? Might he and Mr Castle have discussed warning the public? Perhaps Mr Stanhope could have called the radio stations that night, or the *Canberra Times*, and done the public the immense service of saying that he, as Chief Minister, felt that the people needed to know what was happening.

Canberra might have had more than 18 hours to prepare for what was to come. Many thousands of different decisions would have been made across the city on that fateful day. But Mr Stanhope tells us that he made no response to that call. To be specific, he tells us that he does not recall making any response. Perhaps his recollection will be revised yet again one day.

The next day most of the senior officials met at 8.00 am and 9.30 am to discuss evacuations, warnings and the prospect of a state of emergency. As the first meeting was ending, at around 9.10 am that day, chief executive Keady rang his acting minister and again there was no answer, but we now know that Mr Stanhope, at last, rang him back an hour later. We also know that at that time—at 10.09 am—they would have discussed the potential for the fires to approach the city, the retreat of the staffed staging post from the fire's path, and other matters that Mr Keady recounted to the coroner several days ago. How could they not have discussed warning the public? How could they not? Yet Mr Stanhope denied that for over a year. He tells us that he forgot it.

Mr Speaker, the minutes of those meetings are available. The minutes of those meetings actually show exactly what was being discussed and the minutes of those meetings actually show, if I can find them, the sorts of things that both Mike Castle and Tim Keady were being told at the time. The meeting of the 17th at ESB started at 6 o'clock. The minutes tell us that evacuation of the forward post at Bulls Head was to occur. The meeting was told that the expectation was that the fire would reach the Cotter the next day at about 12 o'clock, Uriarra at about 4 o'clock and Stromlo and Duffy at about 8 o'clock. Mr Castle would have been aware of that. When he rang the Chief Minister, that is what he would have told him.

The next day there were two meetings. Mr Keady is reported by some sources to have been at both of them and only at one by others. *(Extension of time granted.)* When the Chief Minister rang back the next morning at 10.09 am he would have got Mr Keady in the meeting that was discussing the setting up of evacuation centres and the fact that the Red Cross had been asked to set up its national information service—the 1800 number that people are directed to use to inquire about missing or potentially dead loved ones. They talked about setting up evacuation centres with pet enclosures and they talked about Lifeline setting up scripts to work with Canberra Connect so that the public could be informed.

That meeting was also told of a potential run from McIntyres Hut impacting on Weston Creek to Greenway and potentially west and south Belconnen resulting from a more westerly wind; that meeting was told of a potential run from Tidbinbilla impacting on the Bullen Range and the southern part of Tuggeranong; and that meeting was told of the potential threat of the Stockyard fire moving towards Williamsdale. That was what Mr Keady was hearing or had just heard when the Chief Minister called him back. The Chief Minister's defence is, "I cannot recall. It must have been trivial." Mr Keady has discounted that. It was not trivial. I seek leave to table the minutes of those two meetings, Mr Speaker.

Leave granted.

MR SMYTH: I table the following documents:

> January 2003 bushfire operations—Planning meetings—Minutes—
> 17 January 2003 at 1800
> 18 January 2003 at 0930

Mr Speaker, all of that has been denied for over a year. Mr Stanhope tells us, and it should appal us, that he had drifted for nearly a day in a fog of unknowing. Then he tried to claim that he went to the headquarters of his own initiative. Of all his statements, that boast now sounds the most hollow of all.

All morning on the 18th the police pleaded for the public to be warned and for a formal state of emergency to be declared to allow for the vital and dramatic increase in official coordination of action. Some time after one o'clock, Mr Stanhope was in the meeting that took place at the emergency services headquarters at Curtin. By around 2.30 pm the police arguments finally prevailed and Mr Stanhope relieved himself of any further demands of leadership and passed the task to the more able hands of the Chief Police

Officer, Mr Murray, who then gave it over to the CFCO. At 2.45 pm the first indications of public warning went out. At 3 o'clock, Duffy burned.

Mr Stanhope has utilised the technique of being unable to recall to gloss over large parts of this story. But in doing so, he has misled this Assembly on multiple occasions. We now know that Mr Stanhope created a false impression from as early as the sitting day of 18 February 2003. On that day he said that he was first informed that a state of emergency might be needed after 2.00 pm on Saturday, 18 January. We now know that the matter was raised at a cabinet meeting as early as the Thursday before. Mr Stanhope misled the Assembly on 29 May 2003, when he claimed:

> My first contact with an ACT official on the day of the fire was somewhere between—I'm guessing, I'm guessing this—12 and 12.30, when I had a telephone conversation with Mr Tim Keady, as I was driving to the Emergency Services Bureau; and that was my first conversation. I decided for myself to attend the Emergency Services Bureau.

That is simply not true.

On 21 August last year Mrs Cross suggested during a question that Mr Stanhope was advised in the morning about the state of affairs and the need for the declaration of a state of emergency. He denied that to the Assembly. On 3 March this year he responded to a question from me with this claim:

> …the telephone call that I received from Mr Keady—which was the first contact I had with any of my officials on that day—was somewhere around one o'clock…

He went on to emphasise this point, saying:

> That was the first contact I had with my officials on that day.

He gave the same false information to the coroner. He went even further with his claim that he went out to Curtin of his own initiative—given that we now know that he was briefed at 10.00 am, this remark is the height of cynicism—by saying:

> I had a desire to be updated on what was going on—a desire that I generated. This decision was taken not as a result of any contact with any official but one that I made of my own volition.

I suspect, Mr Speaker, that you would not allow me to call that a barefaced lie, so I won't.

MR SPEAKER: Withdraw that, Mr Smyth.

MR SMYTH: I withdraw, Mr Speaker. Mr Stanhope went on to say:

> As a consequence of the fact that I was acting minister for emergency services on the day of the fire, I made the very obvious decision to ensure that I was briefed. I made the decision that I needed to be updated. I made the decision to seek that briefing at lunchtime.

We now know that this is a completely manufactured story, told repeatedly over more than a year. Throughout the two sitting weeks in March this year, the opposition probed these issues and the Chief Minister stuck repeatedly to his false history. In doing so, he repeatedly misled this Assembly. Through the sitting weeks of March, the opposition repeatedly invited him to confirm whether his remarks were accurate and to consider correcting the record.

Mr Speaker, if you had not recalled before then, surely you would have gone and checked. In the course of that year when you had been asked so often to confirm or to check what was going on, you might have gone and checked. But abruptly on 4 May the Chief Minister came into this place and attempted to avail himself of the leniency that the Assembly traditionally extends to those who have misled, who have discovered a genuinely inadvertent error.

Mr Speaker, I have been in that position. At one time when I was a minister I got the time of a meeting wrong during debate. It was information supplied to me and I got it wrong. It was challenged in that debate. The debate finished, but I had the courage to immediately ring, in that case, the union official who had given a conflicting story and ask him whether I was right or he was right. The official checked his diary and, I have to say, was pretty pleased to tell me that I was in the wrong, but he also recognised that I had had the guts to ask him. I came back into this Assembly straight after lunch, at the very first available time, and made amends.

But that is not what Jon Stanhope did last week. Not only had he waited a year; he acted only because others were on his trail. Even the press release he issued about his apology contained two misleading statements. The first is that he told a press conference that he had come back in at the earliest time. That is not true. The earliest time would have been at 10.30 that morning. The Chief Minister's statement says, "I was told the night before by my staff." The next available time for the Chief Minister to correct the record was exactly 10.31 am, after you had finished, Mr Speaker. He chose to wait until 2.30 pm to avoid scrutiny.

He went on to say, "The fact is that had I not made the statement upon discovering my error, it is absolutely certain it would never have been revealed." He made that statement in a press release this morning or late last night. That is simply not true. It was about to be revealed. Mr Stanhope jumped before he was pushed by the coronial inquiry into telling the truth. Indeed, the paper of Wednesday of last week said:

> Mr Stanhope's office was told on Monday night the coronial inquiry had the phone records of ESB executive director Mike Castle and they revealed a call to Mr Stanhope at 7.14 pm on January 17.

That is what prompted him to come back, not the assertion that he had suddenly found out. It was not some accident. He was risking being caught or he had to get into this place first. Mr Speaker, I had been in that position once. Somebody had corrected me and I had the courage to go and check. I came back as soon as I could. Jon Stanhope did not.

If Mr Stanhope were sincere in his position, he would have checked his records when he was first under scrutiny over a year ago. Yet he told us last week that his staff had only checked in the last week of April this year. Far from apologising for this extraordinary delay and for a year of misleading the Assembly, he had the arrogance to try to boast that the matter had been raised only through the initiative of his staff.

Mr Stanhope did not take the initiative; as the clipping shows, he had been caught out by the scrutiny of others. There is widespread speculation that Mr Stanhope and his office have come forward only because the staff of the coronial inquiry had made inquiries concerning the vital phone records. I cannot help seeing an eerie similarity between what Mr Stanhope did on the day of the fire—neglect, then denial, all followed by a boast that he had acted of his own initiative to correct the situation—and his dubious account of how his actions in misleading this Assembly finally came to light.

Mr Speaker, the Chief Minister has misled us repeatedly over more than a year. *(Further extension of time granted.)* The very first instance of misleading came on the very first day of sitting after the fire, in the special sitting that we had on 30 January 2003, when Mr Stanhope continued to give the impression that the fire was unexpected. He said in his speech:

> Mr Speaker, the firestorm that hit Canberra on 18 January was a disaster of an unprecedented scale in the ACT…

The fire was not on an unprecedented scale, as we have since found out. The early estimations that it was a 100-year event are simply not true. Similar fires happened in 1939, 1952 and 1983. If the experts had been consulted, they would have said that it was a 10 or 20-year fire, which is what they said.

We then get to the declaration of a state of emergency. On 18 February 2003, Mr Stefaniak asked the Chief Minister to tell the Assembly how he went about declaring a state of emergency. The Chief Minister was then asked the following supplementary question:

> My supplementary question is: when were you first informed that a state of emergency might be necessary?

Mr Stanhope answered:

> Between 2.00 and 2.30 pm—or 1400 and 1430 hours, as the Emergency Services Bureau likes to put it—on Saturday, 18 January.

Mr Speaker, that is a misleading statement. That was not the first time. I can quote the text from the coronial inquiry. We have an article that says that Mr Keady told the court the he was sure that those at the meeting discussed the possibility of fires reaching the urban area. He said that the possibility of a state of emergency being declared was also discussed on 16 January.

We know from more detail that has emerged from the cabinet briefing that cabinet clearly was aware of the possibility of a state of emergency being declared because it had left the decision to the Chief Minister as he was going to be the only minister around at

the time. Once that had been revealed, and it was only revealed by the McLeod inquiry—there is a one-line reference at about page 35 of the report—suddenly everybody remembered that they had been warned, but nobody has attempted to correct that misleading.

What was the state of emergency about? It was not about fire. It was about the possibility of a blackout because the powerlines may go down. There was a chance that 80 per cent of Canberra would be blacked out. Nobody else had ever heard of this excuse. Even the Chief Police Officer, who would have been the emergency controller, said that he first heard about it when he read it in the paper. Apparently, Actew was not told that there was the chance of a blackout of 80 per cent of Canberra. You would have thought that Actew might have known. Mr Quinlan used to work for Actew. That excuse does not hold water either because for an 80 per cent blackout to occur in the ACT the substation at Macgregor would have to burn. That is the only way it could have happened.

The excuse given by the government was the possibility of arcing between the wires causing a blackout. That is simply not true. Two wires come over the mountains. Two other wires come from other power stations. Even if the two wires coming over the mountains had burned and collapsed, the other two wires would have had adequate capacity to fuel the ACT's electricity needs.

What was happening in the mountains? The powerlines were arcing; there were brownouts. There was hazing, and it was happening for two or three days before the fires came through. But they did not burn out and they did not collapse. An emergency declaration over a blackout was a fabrication at a later point.

We then get to the point that cabinet never thought the fire was serious. We have had Mr Corbell break ranks and say that he asked questions about warnings. He certainly thought it was serious. The one that I find very disturbing is the emphatic declaration by the Chief Minister that Phil Cheney never told anyone. Mr Stanhope said:

> As to whether or not, as Mr Pratt has just stated, Mr Cheney advised the Emergency Services Bureau that the fire was likely to reach Canberra, and the Emergency Services Bureau concurred in that, those things are news to me.

He then said that Mr Cheney had not told emergency services and he attacked Mr Cheney. He attacked the man who is the guru on fires in this country. We now know that, on the 14th Mr Lucas-Smith, told Mr Keady that Mr Cheney had told him. So the government did know.

We then get to the issue of the chronology of events on that day. Mr Speaker, the first question I asked on 18 February last year was whether we could have such a chronology. I asked:

> …can you tell the Assembly the chronology of events on that day…

We had the following fabulous interjection from Mr Hargreaves on the Chief Minister:

> What did you have for breakfast?

I was fobbed off. The Chief Minister said that there was no chronology. He said:

> I am more than happy to ask the Emergency Services Bureau for a chronology of the fire's progress on that day.

I had to come back and ask him whether he would give me a chronology. I had to come back and ask him a couple of times. I came back and said that I had an overdue question and was told that responses had been signed off. I had to ask again and was ultimately told that the McLeod inquiry would deal with the subject of the chronology. There is no chronology in the report of the McLeod inquiry. There is a day-by-day summary, but there are no times. The report of the McLeod inquiry is devoid of times as to what burned when, and that is so essential as to who knew what. That is why that was misleading.

We had the assertion that the McLeod inquiry would uncover all. Mr Stanhope said:

> It is the government's intention that the inquiry to be undertaken by Mr McLeod be complete, be inclusive and involve public participation.

He said that it would review or inquire "into all aspects of the Emergency Services Bureau's response and all issues around the fire". Mr Speaker, I consider that to be a misleading statement, because the McLeod inquiry did not and the minister responsible did not ensure that that would happen. That was a breach of ministerial responsibility and it was misleading.

Mr Speaker, this morning we had the revelation on radio station 2CC that Mr Stanhope was seen on Red Hill at approximately 6.00 pm on Friday, 17 January. I am sure that the Chief Minister will clear that up or verify it. We have had a number of phone calls, the radio station has had a number of phone calls and I know that at least one other member of this place has had phone calls from people saying that he was seen with ESB officials on Red Hill observing the fires that night. The Chief Minister might like to clarify whether that happened.

We then get to the statements that the Chief Minister never spoke to anyone and that nobody called him or, if they did, the matters were trivial. Mr Keady revealed last week in the coronial inquiry that when Mr Stanhope rang him on Monday of last week to ask whether he had made a phone call he could not recall either. However, Mr Keady did advise the Chief Minister the day before he told this place that the phone call would not have been trivial; there would have been important matters that caused him to ring at 9 o'clock on a Saturday, remembering that Mr Keady is sitting between two meetings at this stage when he tries to make the call and, when he speaks to the Chief Minister, he comes out of a meeting.

Mr Keady did not speak of trivial things, as the Chief Minister asserts. Mr Keady spoke of serious things, of serious issues, to make sure that the Chief Minister knew what was happening. One of those issues was about the need to set up evacuation centres. Who believes that the ACT public service, as good as they are and as responsible as they are, took it upon their own shoulders to set up three evacuation centres in the ACT without informing a minister? The Chief Minister's assertion that the calls were trivial is nonsense.

There is more, Mr Speaker. I would ask the Chief Minister to table during his speech his phone records and those of his chief of staff so that we can see for ourselves whether other phone calls were made. He might tell us where he was the night before, because that might help clear up some of the mystery. It might prompt his memory. The Chief Minister is keen to contextualise things. If you get a context, that might help you to remember.

Misleading the Assembly is a sacking offence. We are not here today to argue whether Mr Stanhope has misled the Assembly. He actually owns up to that. His guilt is not in dispute. I have just added another dozen or so occasions on which he has misled the Assembly—not just on phone calls, but on warnings, on declaring a state of emergency, and on what he was told and when he was told it. They are all misleading statements as well.

I say to all members that his amnesia excuse is not acceptable. His excuse is below the standard needed to maintain good government down through the years. If we accept it, it will spread across the ministry and the public service. It will become the standard technique of evasion and it will corrupt even the initially honourable. The Chief Minister's excuse is not believed by the public. If we accept it, we will be telling our community that politicians now have immunity from the hard questioning of parliament and can avoid it.

MR SPEAKER: Order! The Leader of the Opposition's time has expired.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.14): Mr Speaker, let me make one thing clear at the outset: I take this motion seriously—most seriously. I take it seriously because of its nature. This is a motion that reflects directly on my personal integrity and my honesty, which I hold dear.

I also take this debate seriously because I respect the processes of this Assembly, and there can be no more serious motion than one of this nature. My political fate, and the fate of my government, is tied to the vote that will follow this debate. This point is a political one, but important: why would I risk the fate of my government by attempting to conceal some telephone calls, when the fact of those calls is on the record, subject to the scrutiny of the coroner and all those parties to the inquiry into the 2003 bushfires? Why would I do that? For that, at its essence, is what this debate is about.

In the motion before the Assembly, Mr Smyth suggests that I "repeatedly misled" the Assembly on the question of the advice I was given and the contact I had with officials on 17 and 18 January 2003. In public the opposition leader has argued that I was found out attempting to hide the fact of the telephone calls; that I had deliberately sought to conceal the fact that, between the cabinet briefing on Thursday, 16 January 2003 and the morning of Saturday, 18 January 2003, I had in fact been in contact with senior government officials in connection with the fires burning to Canberra's west; in other words, that I am a liar.

That is the basis of Mr Smyth's argument, although in publicly pushing it he has somewhat dramatised the matter. This is what Mr Smyth has said:

- In a media release of 5 May he referred to the "Alan Bond excuse". He said "collective amnesia was heavily impeding the work of the Coroner's Court".

- In another media release of 6 May he said that my version of events had "been challenged by evidence" given by Mr Keady, who at the time of the fires was Chief Executive of the Department of Justice and Community Safety. He referred to a rumour that I had not informed my Labor Party colleagues that I planned to make the statement I made to the Assembly last week.

- On 5 May he told ABC Radio that he thought he knew what message Mike Castle had left me when he rang on the evening of 17 January. He said I was obviously not under any stress or alarm on the morning of 18 January, because I had a cup of coffee with my son. It was "a long bow", Mr Smyth said, "to say we"—the government—"didn't 'know that something was about to happen'."

- In the *Canberra Times* of the same date, Mr Smyth was quoted as saying, "For 16 months Jon Stanhope has consistently said 'I was not told, I was not called, I did not know'."

The Leader of the Opposition has a penchant for colourful language, for the deft one-liner. This is a skill he has developed, no doubt, in an effort to increase his chances of a run on the nightly news, or a headline in the paper. It is unfortunate, however, that the search for relevance leads to such over-dramatic beat-ups, because that approach inevitably means the facts are ignored and the truth is stretched.

I said that this is a serious motion; it deserves a serious response, even if we do have a somewhat theatrical approach. This is what happened. In an estimates committee hearing of 19 May 2003, Mrs Cross asked me questions about the morning of 18 January and when I was advised to declare a state of emergency. In my answers, I said:

> I didn't even speak with a member of the Emergency Services Bureau or any other senior officer of, indeed, any member of the ACT public service before midday. At no stage between 12 o'clock and 2 o'clock did anybody raise with me the declaration of a State of Emergency. My first contact with an ACT official on the day of the fire was somewhere between—I'm guessing, I'm guessing this—12 and 12.30, when I had a telephone conversation with Mr Tim Keady, as I was driving to the Emergency Services Bureau; and that was my first conversation.

On 21 August 2003, in answer to a question from Mrs Cross, I said:

> I had no conversations with anybody associated with the Emergency Services Bureau before 12.20. I am not quite sure at what stage I did have my first conversation with the Emergency Services Bureau. It was certainly after that.

On 3 March this year Mr Smyth asked me a question about the estimates committee hearing. In my answer, I said:

> In terms of timeframes—I am going on memory in relation to the actual times—I attended the Emergency Services Bureau at what one might say is lunchtime; a timeframe that we normally equate to be between 12 o'clock and 2 o'clock. I have

> now lodged a formal statement with the coroner pursuant to a request from counsel assisting the coroner that I provide a statement to the court in relation to that. I think that in the statement I have given to the coroner's court—I do not have it with me—I state that I believe that the telephone call that I received from Mr Keady—which was the first contact I had with any of my officials on that day—was somewhere around one o'clock; I think that is what I say.

In answer to a supplementary question, I said:

> I received no call. I received no information about the behaviour of the fire or the event of the fire—none whatsoever. I made the decision to attend at the Emergency Services headquarters because I had on that day assumed responsibility for emergency services as a result of a decision that the minister, Mr Wood, had earlier taken to take leave as and from that day.

Mr Speaker, that response referred to a statement of mine to the coroner. In fact, I made two statements to the coroner. In the first, dated 14 October 2003, I said:

> On Saturday 18 January Mr Tim Keady, the Chief Executive Officer of the Department of Justice and Community Safety, contacted me sometime, to the best of my recollection, between 1.00pm and 2.00pm, requesting that I attend a meeting at ESB HQ.

In the second, dated 12 March 2004, I said that I did not recall receiving any briefings about the fires on 17 January 2003. I said that on 18 January:

> At lunchtime, I decided of my own volition to go into ESB at Curtin to find out more directly what was occurring. As I was approaching ESB, I received a telephone call from Mr Keady in which he informed me that the fires were becoming a matter of much urgency. He asked that I immediately attend at ESB. I explained that I was about to arrive at ESB, and met with Mr Keady at ESB a few minutes later. I have no memory of any specific or direct contact of me by any person about the fire between the time of the Cabinet briefing on the morning of 16 January and the call from Mr Keady at lunchtime on 18 January.

That is what I told the coroner in my statements. I gave evidence on 20 April 2004. Essentially, I was questioned by counsel assisting in a chronological manner, starting from 12 January 2003, the day before I was due to return to work from my Christmas leave. I was questioned at some length about the cabinet briefing of Thursday, 16 January 2003. I was questioned only briefly about events on 18 January, and the focus of those questions was on the declaration of the state of emergency. I was not asked about any contact I had, or might have had, with officials or emergency services personnel.

Quite obviously, I have made numerous public statements about a range of aspects to do with the 2003 bushfires and the inquiries that have since been established. I have answered many questions from journalists and given countless interviews for press, television and radio newsrooms. In the vast majority of cases where I have been questioned about the contact I had with officials in the period the subject of this debate, I have qualified my answers.

I have almost always prefaced my answers with the phrase "To the best of my recollection", or "To the best of my knowledge". I have been careful to do that because I know the sheer volume of meetings and telephone calls and conversations that occurred during that hectic period. But on occasions, as I have confessed, I have failed to make the qualification. For example, on 21 April this year I told ABC Radio that no calls had come to me on 17 January or on the morning of 18 January. I told the ABC TV's *Stateline* program that I had not heard from anyone at ESB of the morning of the 18th. I made both those statements without qualification.

Those are two examples of unqualified comments I made in public, and in so doing I did mislead the community. They were inadvertent, and in stark contrast to the bulk of my comments, which were almost invariably qualified. There may be other examples, and they are equally inadvertent.

I have detailed the manner in which I inadvertently misled the Assembly and the public, and the circumstances in which those mistakes occurred. I do not believe that any reading of my statements to the coroner, or the transcript of the evidence I gave to the inquiry, will reveal any misleading comments, despite the rather desperate allusions and false statements the Leader of the Opposition has made on the public record. I did not mislead the coroner.

But I did mislead the Assembly and the public. It is a matter of record that on the afternoon of Monday, 3 May—Monday last week, budget eve—a member of my staff informed me that telephone records of Mr Mike Castle, the Chief Executive of the Emergency Services Bureau at the time of the bushfires, as tendered to the coronial inquiry, showed he had made a call to my mobile telephone at 7.14 pm on 17 January 2003. I was told that Mr Castle's records showed the call lasted six seconds. I was further told by my staff member that a check of my mobile phone records showed a call had been diverted to my message bank at the same time. It is fair to assume the two records are of the same call from Mr Castle.

I was also told that a further check of my telephone log, for the morning of Saturday, 18 January 2003 showed a call had been diverted to my message bank at 9.10 am, and that I had made a call to a mobile number at 10.09 am. My staff told me that that call had been to the mobile number of Mr Keady. The conversation lasted six minutes and 45 seconds.

For the sake of easing Mr Smyth's curiosity, might I say that my telephone records show seven calls from my phone on 17 January: to my office, to my chief of staff, to my message bank, and one private number. On the morning of the 18th there are three: to my message bank, to Mr Keady and to my home. Mr Smyth is anxious to know if, attempts to contact me having failed, calls were made from officials to my senior staff on either the evening of the 17th or the morning of the 18th. The answer is no. I rang my chief of staff from the ESB early on the afternoon of the 18th and asked him to contact my media adviser and both of them came to Curtin. Mr Smyth will simply have to accept that there is no conspiracy.

Mr Smyth will have to accept that the fact that officials did not contact my chief of staff or anyone in my office confirms what I have always said: that the advice I was receiving

did not contain dire warnings or raise alarm in me. If the situation was so grim why, on failing to make those connections with me, was not my chief of staff contacted?

I have no memory of retrieving those messages to my phone on 17 and 18 January, or of making that call to Mr Keady. I accept that I did, but I have no memory of so doing, and no memory of what might have been discussed. That is the simple truth. I was shocked to learn of the fact of the calls. But I understood the significance of the information as soon as I learnt of it. I understood that I had misled the Assembly and the public. I did not mean to but I did, and I understood that I had to act to correct the record as soon as I could. That determination to correct the record promptly was complicated by the fact that I was a witness before an ongoing judicial process to which I also had an obligation—something, it seems to me, we are just a little too quick to forget in the context of this debate. Of course, I am still in that position.

I reviewed my statements to the coroner and the transcript of my evidence and determined that I had not made misleading remarks to the coroner. However, I thought it only correct to inform the coroner of the discovery of the calls as soon as possible. The following morning, Tuesday, 4 May, I had a conference with the government's legal advisers and prepared and signed a letter to the coroner. The conference could not be held before 11.30 because of the availability of the government's counsel.

During the morning, despite Mr Smyth's assertions to the contrary, I informed my caucus colleagues of my mistake and of my intention to correct the record. I, along with the rest of the ministry, attended the budget lock-up for media commitments around lunchtime. On the way to my office from the budget lock-up, at some time after 2.00 pm, I effectively bumped into Ms Tucker—she was in her outer office as I passed—and I informed her of my intention; as much as anything, to unburden myself. As members are aware, I made a statement to the Assembly before questions. The conversation with Ms Tucker lasted only a minute.

Mrs Cross will have to accept that there was no conspiracy to deny her knowledge of what was to come. My obligations were to the court, to my party colleagues, and to the Assembly and the public.

That is the truth of my correcting of the record. There was no attempt to cover up, no attempt to bury the event, as some in this place and in the media have suggested. I acted at the first available moment, after attending to the protocol associated with the Coroners Court. It was budget day, a day on which the Treasurer brought down my government's third budget, a budget of which I am immensely proud—and I apologise to my colleagues and particularly to the Treasurer, Ted Quinlan, for having to release a story that would inevitably take some of the gloss off an extremely good piece of work.

There is a second aspect to the opposition's attack on me over these telephone calls and messages, and that goes to the content of the calls. Mr Smyth has suggested that, because of the timing of these calls to me from Mr Castle and Mr Keady on the evening of 17 January and the morning of 18 January, they must have contained alarming information or warnings and that I was derelict or blasé in my response, or lack of response, to them.

As I have said, I have no memory of receiving or making those calls, let alone of their content. Mr Keady has said the same thing. Yet Mr Keady told the inquest that inevitably the calls were about the bushfire emergency, and of course that must be the case. Mr Keady offered some speculation about the content of our conversation—speculation that it must have been an update on the fire situation, in particular an update of events that had occurred on 17 January.

Mr Keady in evidence confirmed what Mr Castle's telephone records show: that the two men had had a conversation just before 10pm on 17 January. Mr Keady speculated in evidence that he might have brought me up to date with the information Mr Castle had passed on: the evacuation of the Bull's Head staging centre and the establishment of a new staging centre at Curtin oval; the fire developments in the rural area; and the spotting of the McIntyre's Hut fire into the pine forests near Uriarra.

That all seems reasonable. It is, in fact, supported by what appeared in Saturday morning's *Canberra Times*, which I undoubtedly read, and which was based in large part on what the reporter had been told by Mr Castle in an 18-minute telephone conversation which he had with her at, I think, around 9.00 pm on Friday, two hours after he had rung my mobile number and just before he spoke to Mr Keady.

That information was important, obviously, but it did not cause Mr Castle or Mr Keady particular alarm. Mr Keady agreed with counsel assisting the coroner that it was not crossing his mind on Saturday morning that a declaration of a state of emergency might be a likely possibility.

I do not believe the conversation with Mr Keady covered any more ground than what he has suggested. It did not cause me undue alarm. It has been put to me—and Mr Smyth has suggested, solely on the basis that the call occurred on the morning of 18 January—that the content of the conversation must have been of a critical nature, so critical that it demanded an immediate response. That is a logical absurdity.

We need to look at what was being reported in the media. Mr Castle spoke to the *Times* on Friday evening. The details of that conversation were reported on the front page of the newspaper on 18 January, under the headline "Bushfires break through". The first paragraph of the article states:

> Fires have escaped containment lines in the ACT and are running out of control, with rural properties along the Namadgi National Park now at risk in the continuing ferocious conditions.

The article goes on to say:

> Firefighters were last night battling to protect rangers' homes in the Tidbinbilla Nature Reserve as all three fires in the Namadgi National Park were spreading …

Contained in the body of this publicly available report was a statement attributed to Mr Castle—when I say "publicly available", it was in the *Canberra Times*—indicating:

> Emergency Services Bureau executive director Mike Castle said last night the situation was serious, as efforts turn from trying to control the fires to protecting property.

The article goes on to directly quote Mr Castle as saying:

> It's the worst conditions we've ever had. Normally there might be adverse conditions for 24 hours and then something changes. This looks like continuing for three or four days

That was the view of Mr Castle on Friday night: "This looks like continuing for three or four days."

Further in the article we find quotes from the Chief Fire Control Officer, Mr Peter Lucas-Smith, which state—and these are Mr Peter Lucas-Smith's views on Friday evening:

> The threat from the conditions over the next few days is going to be quite significant for our firefighters on the fire line.

And again, Mr Lucas-Smith, talking about the firefighting effort in the days ahead of the Friday evening, is reported as saying:

> The fires have been very difficult to control," Mr Lucas-Smith said. "We've got our containment lines in, we're working from those and the conditions are certainly going to make it a fairly arduous task over the next four or five days.

No sense of imminent disaster is conveyed in this article. This is the same information that was being presented to the government. I was not presented with a different set of facts.

It is inconceivable that I was provided with a warning, or that I was alarmed in any way and didn't respond. It is simply inconceivable that I, as the Chief Minister and acting minister for emergency services, if I had been warned or alarmed, or if issues had been raised that demanded my attention, would not have responded. I would have responded immediately. I would have responded automatically.

The one assumption I can make is that the assessments of the fire situation that had been previously conveyed to me and to my colleagues persisted at that time on the Saturday morning. There is simply no basis for assuming anything else—none. Any other assumption is to assume that I would be derelict, that I would disregard my obligations, that I would be totally insensitive to the people of Canberra—and that is simply inconceivable.

I said earlier that, having reviewed my statements and evidence, I came to the view that I had not misled the coroner's inquiry. I am still of that view. However, I felt it an obligation to inform the coroner of the lapse of my memory revealed by my telephone records.

It is pertinent to this debate to refer to the view of the coroner and counsel assisting the coroner. On the day he informed the inquiry of my letter, 4 May this year, counsel assisting indicated that he did not believe it necessary to recall me to give further evidence. *(Extension of time granted.)* On 5 May the coroner, in court, offered me the opportunity to return to give further evidence. She said, however, that neither she nor counsel assisting could see any need for me to be recalled. I agree with that view.

Almost inevitably, debates of this nature in this place have canvassed the issue of ministerial responsibility. Mr Smyth has referred to the concept in the week since he gave notice of his motion. But I cannot see the relevance of a debate on ministerial responsibility to the issue before us. I have not been charged with overseeing a government operation that has gone wrong. There is no Bruce Stadium in this; there is no Canberra Hospital implosion. This is a case of failing to remember. This motion is based on failing to remember some phone calls.

Mr Speaker, I will, however, take a moment to expound on the notion. Within the framework of the self-government act, the ACT executive conforms to well-established Westminster-style principles of collective and individual ministerial responsibility. Perhaps one of the most definitive Australian statements of the importance of individual ministerial responsibility was provided by the 1976 report of the Royal Commission on Australian Government Administration, headed by the late HC "Nugget" Coombs, which stated:

> It is through ministers that the whole of the administration—departments, statutory bodies and agencies of one kind and another—is responsible to Parliament and thus, ultimately, to the people. … The responsibility of ministers individually to parliament is not mere fiction. … Parliament is the correct forum, the only forum, to test or expose ministerial administrative competence or fitness to hold office.

Westminster principles of individual ministerial responsibility were strongly reaffirmed by the ACT government as recently as 12 February this year, when I tabled the new code of conduct for ministers. The new code was the result of a comprehensive review of the code used by the previous ministry, involving examination of best practice standards across Australia and overseas and incorporating the principles and values that reflect the high standards expected of someone in a minister's position of trust.

In tabling the new code of conduct, I affirmed that my government did not intend simply to adopt a code and think nothing more of it. I said that the government would not back away from the code when it suited; instead the government intended to stand by it and uphold its values. With regard to individual ministerial responsibility, the code of conduct for ministers states:

> All Ministers are to recognise the importance of full and true disclosure and accountability to the Parliament.
>
> … Being answerable to the Assembly requires Ministers to ensure that they do not wilfully mislead the Assembly in respect of their Ministerial responsibilities. The ultimate sanction for a Minister who so misleads is to resign or be dismissed.

> Ministers should take reasonable steps to ensure the factual content of statements they make in the Assembly are soundly based and that they correct any inadvertent error at the earliest opportunity.

The code of conduct is very clear. It is essential that ministers make every effort to ensure that their statements to the Legislative Assembly are factual, and to the best of their knowledge soundly based. This is a vital foundation of the Westminster system of ministerial responsibility. Being answerable to the Assembly requires ministers to ensure that they do not wilfully mislead the Assembly. The code recognises that ministers can and do make mistakes. The key principle is that they should not wilfully mislead or deceive—that, indeed, is a grave offence. And where it is found that a minister has made an inadvertent error, the minister is duty bound to correct that error at the earliest opportunity.

These principles are applied in all other Australian jurisdictions. Thus, the Commonwealth government's current guide on key elements of ministerial responsibility states:

> Ministers must be honest in their public dealings and should not intentionally mislead the Parliament or the public.
>
> Any misconception caused inadvertently should be corrected at the earliest opportunity.

Similarly the South Australian government's ministerial code of conduct states:

> Ministers must ensure they do not deliberately mislead the public or the Parliament on any matter of significance arising from their functions.
>
> It is a Minister's personal responsibility to ensure that any inadvertent error or misconception in relation to a matter is corrected or clarified, as soon as possible and in a manner appropriate to the issues and interests involved.

In all Australian jurisdictions, it is a not uncommon practice for ministers to correct inadvertent or unintentional errors in their public and parliamentary statements. Ministers are duty bound to correct any inadvertent errors as soon as they become aware of any statement they have made which is incorrect, omits critical fact or is otherwise misleading. Ministers who make inadvertent errors may well be criticised; that may well be appropriate; but it is not a hanging offence if they move quickly and appropriately to correct or clarify any misleading statement.

In the ACT, ministers must accept responsibility for any inadvertent mistakes they might make in their statements to the Assembly, and they must correct the record as soon as possible. The Assembly and ultimately the ACT electorate may form a view about the actions and performance of a minister or the Chief Minister. There is very clearly, however, no rule in the ACT or elsewhere in Australia that a minister, premier or chief minister must resign or be removed from office by a resolution of no confidence in circumstances which do not involve a wilful misleading of the Assembly or a gross failure to correct a misleading statement.

There is simply no evidence that I have in any way acted outside the spirit, or the letter, of my government's ministerial code of conduct or the accepted Westminster convention.

I would like to take a moment to reflect on another important notion, and that is to do with the sub judice convention. *Odgers' Australian Senate Practice* describes the convention as follows:

> The sub judice convention is a restriction on debate which the Senate imposes upon itself, whereby debate is avoided which could involve a substantial danger of prejudice to proceedings before a court, unless the Senate considers that there is an overriding requirement for the Senate to discuss a matter of public interest.

The practice distinguishes court procedures from administrative inquiries, such as royal commissions and other commissions of inquiry. It goes on to note that an inquest by a coroner is not in the same category as an executive-government appointed inquiry, and the sub judice principle as such does not apply.

Perhaps not surprisingly there has been an enormous amount of discussion in the public realm and in this place about the events of January 2003. That is to be expected, and it is warranted. But there is a judicial process running, even if not before a jury, and in my view we have a responsibility to be guarded and non-prejudicial in any comments we make on the issues being canvassed by the coroner. That is obviously not the view of the opposition. I have answered numerous questions, many of them recurring, that are directly related to evidence before the coroner.

I contrast that approach with the approach Labor took in opposition during the coronial inquest into the hospital implosion. Yes, we did move a want-of-confidence motion—but after the coroner's report came down. It is true we moved a motion against the then attorney during the inquest, but that was on a peripheral issue not directly related to evidence given to the inquest. And I understand we asked one question during the last Assembly on an occupational health and safety issue associated with the implosion—one single question.

In a debate in the Assembly, it is not uncommon for positions to be adopted on political grounds. In such circumstances, conclusion sometimes precedes analysis. Protagonists in this setting sometimes criticise their opponents for developing analyses that rely on selective choice of facts or dubious assertions of fact. I have referred to some of those today. In the present set of circumstances, prejudice might arise in a number of different ways:

- First, Assembly debate may impact on evidence yet to be given before the inquest. With the passage of time, memories erode. Consciously, or unconsciously, it is sometimes observed that a recent report of an event may be substituted for one's own actual memory. The debate may prejudice the coronial inquiry by degrading the quality of evidence to be taken by the coroner.

- Second, Assembly debate may influence witness behaviour. Anxiety about possible outcomes canvassed in the debate might create reticence about giving evidence,

> perhaps discouraging a witness from giving evidence on a key matter. Debate may prejudice a coronial inquiry by influencing witness behaviour.

These are my concerns, Mr Speaker, and I urge members to give them serious consideration.

I have given a great deal of thought, of course, to the nature of memory in recent days. Until this incident I have always prided myself on my memory. That is why, even when I made unqualified statements about contact with officials, I was confident I had it right. I have had a capacity to retain in my memory a great deal of detail about a broad range of issues. But I have obviously had cause to reflect on that capacity now. In seeking to understand my lapse in memory, in seeking to find some rational explanation for it, I have undertaken a deal of research.

With no sense of false modesty it seems obvious to me that on the morning of Saturday, 18 January 2003, having a few days earlier gone through a most traumatic experience—namely, dragging a dead body from a dam—I was unknowingly a couple of hours away from probably the most dramatic experience of my life. The second phone call, the one from Tim Keady at 12.40 pm asking me to come to the Emergency Services headquarters, was the start of that experience. It was therefore factored into the experience. The 10.00 am call was not considered relevant at the time, as it was not linked to that major experience. *(Further extension of time granted.)*

My understanding now of how these things work is that, under normal circumstances, the memory filters information to avoid the brain becoming cluttered. The brain stores implicit and explicit memories. Implicit memories are stored but the person does not realise that they are there. They can be retrieved but if they are not accessed they degrade over time. Explicit memories are those that a person knows they have. They have been indexed and they can be retrieved.

Lots of phone calls are not remembered because they are not indexed. The memory of the 10.00 am phone call could have been retrieved, perhaps, within a couple of months with appropriate cues, but cannot be retrieved after more than a year, I am advised, probably even under hypnosis. The brain works differently in the state of emergency arousal. It focuses on the information crucial to the task at hand. Anything that is peripheral to that task is discarded.

I don't profess to be an expert on these matters, but I have sought to understand the process, and this is some of the understanding that I have gleaned. Whether or not it is of any use or interest to members, I pass it on. It does not in any way excuse the mistakes I made, but it is, however, my own personal attempt at explaining them.

As I say, I have prided myself in my memory. But on this occasion my memory was apparently overwhelmed by the volume of material it confronted during the height of the bushfire emergency, just as the bushfire itself overwhelmed our firefighting resources. The situation was complicated by my confidence in my memory—a confidence such that I did not ask to have telephone records checked. I concede that those records could have been checked earlier and I now, of course, regret that they were not, but I cast no blame for the oversight.

That is the truth of it, Mr Speaker. I am not a liar. Regrettably, my memory failed me in this instance and I made statements to the Assembly and in public that I did not qualify, and which were wrong. As I have said, that is a matter of enormous personal regret to me, and I have apologised to this place, and to the people of Canberra, for my mistake. But there is no cover-up.

There is no hidden agenda. There is no conspiracy. There is no drama for the opposition to seize upon, except that which it creates itself, or that is created by misguided or mischievous commentators. There are telephone calls, made in the midst of a tense and extended period of some considerable trauma, and I have no memory of them. The truth of it, Mr Speaker, is that the opposition has not made and cannot make out any case to support a want of confidence in me as Chief Minister in relation to this matter.

MR CORNWELL (11.47): When the firestorm struck Canberra on 18 January, I was flying into London Gatwick. At 5 o'clock, London time, I saw on television Jemalong Street—which I recognised as Duffy—ablaze. It would have been 3 am Sunday morning Canberra time. If, even being half a world away, I can remember such an event, why can someone on the spot and directly involved in the matter, not recall, until 18 months later, and only following a prompting, a crucial telephone call. This is the fundamental question that has led to this motion of no confidence in the Chief Minister for misleading the Assembly.

Mr Smyth has outlined the sequence of events about which we have been misled. Let me briefly repeat it. Mr Stanhope, like every other person in this city, was completely aware that we were threatened with major bushfires. As Chief Minister, he had a duty to be far better informed than the average person. The Chief Minister was amongst the ministers formally briefed on Thursday the 16th in an unprecedented cabinet meeting. He knew that the responsibilities of his office and the Minister for Emergency Services were very serious. He knew that he, as Chief Minister, needed to be constantly by his telephone in case the authorities needed to initiate the state of emergency—a decision only he could make.

On the Friday the authorities were clearly becoming alarmed by the deterioration in their defences. The evidence coming through the coronial hearings tells us that the debate was turning into 'when' not 'whether' the fires would reach the city. On that day Mr Stanhope himself assumed responsibility for emergency services. Yet, incredibly, he tells us that, from the cabinet meeting on Thursday until the middle of Saturday, he made no contact with the emergency authorities—although I have been informed that Mr Stanhope and at least one officer were seen on Red Hill on Friday evening.

Amazingly, a call at 7 pm on Friday night is said to have gone unanswered. The message that was left received no reply from the Minister and Chief Minister, who should of course have been in charge. What on earth were the authorities to have done? Surely they called the minister at his home. Surely they tried to contact him through his senior staff. One has to ask: what other secrets remain to emerge about communication with the minister in that day?

Whatever the truth, we know for certain that this Assembly has been misled. For over a year Mr Stanhope has misled us and the public. The truth has come to light only because

of the probing going on through the coroner. Let me remind people that the substance of the cabinet meeting on Thursday came to light only during the course of the McLeod inquiry. The ministers had done nothing to alert this Assembly of that meeting and what it heard.

I cite just one quote from *Hansard*—Mr Smyth has already referred to it—from 3 March 2004. It sums up the Chief Minister's deception. The Chief Minister is caught in question time clearly denying that he had contact with officials on the morning of Saturday, 18 January. I quote:

> …the telephone call that I received from Mr Keady—which was the first contact I had with any of my officials on that day—was somewhere around one o'clock…

I repeat:

> …which was the first contact I had with my officials on that day…

We now know this to be totally untrue. What is this Assembly to do with a Chief Minister—a head of government—who has betrayed its trust? Governments are well aware of the importance of accountability and this ACT Labor government is no exception. Indeed, the very first sentence of Labor's preamble in its code of conduct for ministers issued only in February this year—so it is very much up to date—states:

> The position of Government Minister is one of trust.

This is elaborated upon in section 2 "Respect for the law and the system of government", which states:

> Ministers will uphold the laws of the Australian Capital Territory and Australia, and will not be a party to their breach, evasion or subversion. Ministers will act with respect towards the institution of the Legislative Assembly and are to ensure that their conduct, whether in a personal or official capacity, does not bring the Assembly into disrepute, or damage public confidence in the system of government.

Under "Conformity with the principles of accountability and financial and collective responsibility" the code of conduct goes on to state that:

> Being answerable to the Assembly requires Ministers to ensure that they do not wilfully mislead the Assembly in respect of their ministerial responsibilities. The ultimate sanction for a Minister who so misleads is to resign or be dismissed. Ministers should take reasonable steps to ensure the factual content of statements they make in the Assembly are soundly based and that they correct any inadvertent error at the earliest opportunity.

We know that the Chief Minister, the subject of this motion of no confidence, supports and espouses these commendable, fundamental virtues. Apart from Labor's code, Mr Stanhope is fond of stressing their importance in debates in this Assembly. Indeed, the five motions of censure or want of confidence the current Chief Minister has either initiated or participated in since his election in 1998 are studded with such references that he quotes with approval.

On 30 June 1999 he stated that notions of ministerial responsibility are fundamental to the Westminster system. I note that Mr Stanhope quoted Sir Ivor Jennings, who in a chapter in a book called *The Executive State: WA Inc. and the Constitution* stated, "Each Minister is responsible to parliament for the conduct of his department." On 24 November 1999 Mr Stanhope stated:

> Whilst the code of conduct dealt primarily, as perhaps befits a document emanating from a Liberal government, with issues concerning interests with private companies and businesses, it has this to say about the principle of accountability:
>
> > All ministers will recognise that full and true disclosure and accountability to the parliament are cornerstones of the Westminster system, which at the present time is the basis for government in the ACT…Ministerial responsibility also requires…the individual responsibility of ministers to the Assembly for the administration of their departments and agencies.

How can a minister who champions such responsibility manage to forget, in his capacity as acting Minister for Emergency Services, a telephone call made at this critical time? How did the matter come to light only 18 months after the events of that tragic day? Could this man, Mr Stanhope, be the same man who, when standing against Mr Humphries for the position of Chief Minister, stated so emphatically on 18 October 2000:

> Mr Speaker, I am standing for election as Chief Minister because I have the capacity to do the job properly. I will be supported by a cabinet of capacity. As Chief Minister I will restore faith in the processes of government. I will rebuild the public service and restore its confidence, and restore the confidence of the public in the public service. Mr Speaker, I will restore the integrity of our decision-making process and make government open and accountable.

Is this also the Jon Stanhope, Chief Minister, who on 21 June 2001 was at variance with his own party's subsequent code of conduct of February 2004? He asked the following question to the then Chief Minister:

> My question is to the Chief Minister. Yesterday the Chief Minister welcomed the Auditor-General's latest report *Enhancing Professionalism and Accountability,* in a media release headed "Government overwhelmingly supports Auditor-General's Report". Is the Chief Minister aware that in the report the Auditor concluded that the traditional or accepted concept of ministerial responsibility is broader that that held by ministers in his government?…The Auditor concluded that the definition accepted by this government involved no more than responsibility for improper conduct, ie criminal behaviour or deliberately misleading the Assembly. For the Auditor, the Chief Minister's narrow concept of ministerial responsibility raises the question of who, if anyone, is responsible, and leaves a significant gap in public accountability. Does the fact that the Chief Minister welcomed the Auditor's report and that the government overwhelmingly supports it mean that the Chief Minister is now fully and properly responsible and will accept a broader definition of ministerial responsibility?

That ends the question asked by Mr Stanhope. It is important to refer to that question because in that question of 21 June Mr Stanhope, the then Leader of the Opposition,

clearly indicated that his idea or ideal of ministerial responsibility was broader than criminal behaviour or "deliberately" misleading the Assembly.

Why then, in the government's code of conduct published in February 2004—after the 18 January 2003 bushfires—does the Chief Minister alter his opinion that misleading the Assembly was broader than deliberately doing so and come back to the qualifying phrase "wilfully mislead". This is a puzzle.

I do not know whether there is anything suspicious in this puzzling change from the qualifying statement in the February 2004 code of conduct to the Chief Minister's unqualified statement of 21 June 2001. We do however know that it is not the first occasion in which Mr Stanhope, as Chief Minister, has misled the Assembly, because on 6 March this year he corrected a reply he made the day before. Yet on 4 March our Chief Minister speaks of "some recollection" with Dr Maxine Cooper on a fairly benign matter, while on 3 April he speaks of his recollection of a conversation with Mr Rolandson about fire hazards to public housing units.

This lead me to wonder—in view of the Chief Minister's selective recall—if there was not some other reason for the amnesia apparent in Mr Stanhope's behaviour regarding the crucial telephone calls in question. A check of medical websites identified a neurological condition known as selective hippocampal lesions, which can cause recall deficits. Whether Mr Stanhope suffers from this condition, which I doubt, or whether he has selectively quoted from and adapted his own statements and party's code of conduct to suit his current situation, is beside the fundamental point. He has misled the Assembly and should no longer have the confidence of this house.

MR STEFANIAK (12.01): The Chief Minister talked effectively about a simple rehash of what is already on the public record—a lot of dates and times which are simply on the public record. He did say, however, that it seemed that, between the cabinet meeting on the afternoon of 16 January and about 12.00 or 12.30 on 18 January, there is very little recollection. He said he did not mislead the coroner. Then how come the coroner invited him to come back and give further evidence?

He said a couple of other things that I found a little strange. Given that this man rarely, if ever, goes to the first floor—I have seen him down there a bit since this motion of no confidence was first moved—why on earth did he walk past Ms Tucker's office after a budget lockup? Despite comments by my colleague Mr Smyth in the debate earlier today, he has still made no mention of the Red Hill lookout incident and sighting on the evening of Friday 17 January. We have yet to hear about that.

He has a medical examination. That may have some credibility, although I doubt it—my colleague Mr Cornwell has referred to that already—except when one considers how convenient it is and how many other senior bureaucrats and other officials have had a very similar selective memory loss. These persons were not involved in the rescue of, I think, 13 January as the Chief Minister was.

All of us—or at least those of us who are my age and older—can remember where we were when we heard the news in 1963 that JFK, the President of the United States, had been assassinated. I can recall being on the steps of my home in Narrabundah. My

parents had come home from shopping and it was about 11.30 on a Saturday morning. Similarly, those of us who have lived in Canberra for a long time have very clear recollections of what they were doing on 18 January, especially those of us who had anything to do with the fires, whether we were in Canberra or whether we were interstate.

I was in Wollongong. I had travelled down by bus the night before to pick up my wife and two small children from my eldest stepdaughter's home. I remember leaving Canberra with considerable trepidation on the night of 17 January. I recall being at the opening of a subdivision to the east of the Gungahlin town centre that lunchtime and feeling the hot, searing winds in that case coming in from the south west. I wondered whether it was safe to leave Canberra but, having had no warnings and trusting that the authorities knew what they were doing, I took the bus to Wollongong despite my trepidation.

Mrs Dunne: We did not get the briefing.

MR STEFANIAK: And I did not get a briefing, as Mrs Dunne said. I recall quite clearly the conversation I had at 4.30 pm on the Saturday when I was rung and advised of the fires and the danger they posed to Canberra including, it would seem, my home in the north-west of Belconnen. I recall very vividly details being given of where the fires were at that time. It seems the information was slightly incorrect in some aspects because I was told that the fires were getting into south-west Holt. I vividly remember thinking of you, Mr Speaker. I thought you and your family might be in danger and your house might be going up at that time.

I recall quite clearly a number of other phone calls I made to see what the situation might be over the next four hours. One call was to a neighbour who, as it turned out, had had a very nice party that day and said he had drunk a fair bit of alcohol. Nevertheless, he was able to give me a very detailed point-by-point description of what was happening at that time, it then being about 8.15. He stated that the winds had changed and the danger, as far as Macgregor was concerned, had apparently passed for the moment. It was therefore with considerable incredulity that I heard the Chief Minister say he could not remember, at about 10.00 am on that fateful day, a six and three-quarter minute telephone conversation he had with the Chief Executive of Justice and Community Safety, Mr Tim Keady.

That particular incident is not the only reason we are here today moving this motion of no confidence. The Chief Minister was among the ministers formally briefed on 16 January about the bushfires. By 17 January he, as Chief Minister, needed to be constantly by the phone in case a state of emergency had to be declared, something that only he could do. On that day he commenced acting as emergency services minister. The Chief Minister says he had no contact with emergency authorities from Thursday 16 January until the middle of Saturday 18 January, and we now know that that is wrong. Mr Stanhope has misled the Assembly and the community.

As members know, I was a lawyer before I came into this place. I have spent a total of about 16 years both in private practice and with the DPP. A lot of the time was spent in court for both the prosecution and the defence. In addition, I have been counsel assisting the coroner in quite a few coronial inquests in Canberra, as well as counsel representing

various parties in inquests from other points of view in a number of coronial inquests in the ACT and in the state of New South Wales.

Neither I nor other legal practitioners I have spoken with have seen so many otherwise competent, experienced and learned people experience such significant memory losses as we have seen in relation to these events. It is as if they have all been given a memory curse by Gilderoy Lockhart. This is especially pointed when one considers the very clear evidence given by other persons who can recall the events of the day—be they professional people, other public servants, police officers, firefighters or lay members of the public doing a job under the most stressful conditions and often in life-threatening situations. They have been able to give pretty good recollections of events that occurred and indeed, where need be, conversations.

When giving evidence in court, if a person does not recall what happened and continues to say, "No; I just can't recall," even though others around them in very similar situations can recall events, their credibility comes into question. In my time I have known a number of bureaucrats who made very detailed notes of important events that occurred. They could pull out a notebook and tell you exactly what happened. I have seen that occur on numerous occasions over the years and it is an essential process for a senior bureaucrat. By doing that they cover their backsides when need be. However, there has been a lot of amnesia about the bushfires—and a lot of lost notebooks.

It defies credibility that senior public servants such as Mr Keady cannot remember crucial events and crucial conversations. I hope that he and others have sudden memory rejuvenation. Indeed, I hope the same for everyone involved in this terrible mess. I await that with interest. I also find it amazing that a man with intellectual capacity such as the Chief Minister can forget significant events. I have known him for many years. I was at the legal workshop with him and have heard him on many occasions—in this place and in other places. He has always struck me as a person who has a very good ability to remember things, and a good eye for detail. I find it unbelievable that he suddenly has a complete memory loss on so many crucial issues.

The Chief Minister has told this Assembly that he is sorry—that he "fessed up" to the extra phone calls that he cannot remember as soon as he was advised of them. However, I feel a sense of amazement that he does not seem able to recall these events: either that or he is totally unwilling to tell the truth about what occurred. It really does not seem very credible at all. Also I suppose that, if he is genuine, the question of his medical fitness to do the job he is doing comes into play.

I am especially disappointed because the Chief Minister is also the first law officer of this territory. If he has deliberately misled this Assembly, as the opposition submits is the case, he has failed abysmally in his role as Attorney General and first law officer. The evidence is clear. The Chief Minister has misled this Assembly more than the once to which he has admitted; he has failed to live up to the high standards expected of him as Chief Minister and first law officer.

We are not necessarily concerned here today about statements made in other places such as to the coronial inquest and to the general public. Of major concern to this Assembly are the actions and the misleading in this place, no matter how important other actions outside it are. Before this Assembly he is a politician; he is the Chief Minister. He has set

ministerial standards that, by his own admission, quite clearly he has not lived up to. My colleague Mr Cornwell has referred to one part of the Chief Minister's opening day speech of 12 November 2001. The Chief Minister said at that time:

> Mr Speaker, Labor went to the election not only on a detailed policy platform that has been endorsed by the people but also on a view about how governments should govern. Labor accepts that the traditions and time-honoured practices of Westminster remain at the core of responsible government.

As government has grown, the concept of ministerial responsibility has changed. A requirement to resign is only necessary where the action under scrutiny was theirs; the action was taken on their direction; or was something with which they ought to have been concerned. However, page 48 of the *House of Representatives Practice* quotes from Professor Emy's book *The Politics of the Australian Democracy*. It says that in cases where the minister has misled parliament, condoned or authorised a blatantly unreasonable use of executive power or, more vaguely, where the minister's behaviour contravenes established standards of morality, resignation or dismissal is the appropriate sanction.

Today we have a Chief Minister who, at the very least, has admitted to misleading the Assembly about one significant matter relating to 18 January 2003. So, what should we do? Is it appropriate for the Assembly to retain confidence in a Chief Minister who could have checked phone records but instead relied solely on memory, thus misleading the Assembly and the community? Is it appropriate for the Assembly to retain confidence in a Chief Minister who will decline the invitation of a coroner to return to the witness box and clarify the state of his memory during the period surrounding bushfires? Is it appropriate to retain confidence in a Chief Minister who forgets vital facts?

Of course the bushfires were a busy time but sometimes government is like that. Governments face crises from time to time. Governments have faced war and life and death situations, yet people have not lost their memories in crucial times. People have been put under incredible pressure and still remember salient facts—just as a number of people who have given evidence at the coronial inquest have remembered salient conversations, despite having been in life-threatening situations in some instances. The Canberra community must have confidence in a head of government who is frank with the community, properly notifies them about information they should be aware of and does not just forget information or keep it to themselves. They must have confidence that their Chief Minister will continue to be able to make decisions when crises arise.

The closest Australian precedent to the one before the Assembly is from 1987, as far as I can judge. In that year John Brown, the tourism minister in the Hawke federal Labor government, told the House of Representatives that he had asked a committee to reconsider a tender for Expo 88 because the committee's vote on who should be the preferred bidder was deadlocked. However, he found out that there was a clear majority for one tenderer amongst those able to vote at a later time. When Minister Brown reviewed the relevant file, it became clear that he had made a mistake as to who on the committee was entitled to vote. A Labor minister, he then resigned, citing his genuine respect for the institution of parliament. That may not seem a terribly serious event but I think it shows the high standard that has been set throughout parliaments. The evidence shown by the opposition shows quite clearly that the Chief Minister has misled the

Assembly and along the line has, it seems, misled the Coroner's Court and the people of Canberra. The fourth edition of *House of Representatives Practice* says at page 49:

> In a practical sense, a Minister may resign, not as an admission of culpability, but rather to remove pressure from the Government while serious criticisms of his or her capacity or integrity are properly and dispassionately assessed. Alternatively, a Minister may be given leave from ministerial duties for the same purpose…When responsibility for a serious matter can be clearly attached to a particular Minister personally, it is of fundamental importance to the effective operation of responsible government that he or she adhere to the convention of individual responsibility.

In a statement, which I think was appropriate and that went down very well at the time, the Chief Minister said on 20 January last year, "Don't blame these other people, blame me." He said, in effect, that the buck stopped with him.

Mr Speaker, we are not suggesting the resignation of the Labor government. There are precedents in this place that indicate that a Chief Minister is not necessarily forced to resign as a result of a vote of no confidence. What we are suggesting is that the Chief Minister honour his comments made on 20 January and the commitment given when elected Chief Minister. He should either stand down immediately or, if he will not do so, the Assembly should support—and indeed I would suggest it has no real option not to support, if it is fair dinkum—the motion of no confidence in the Chief Minister.

MRS CROSS (12.15): The Chief Minister, Mr Stanhope, was acting minister for emergency services during the most devastating period of the January 2003 bushfires, yet he has said for a long time that he did not and does not recall anyone contacting him about the fire for two full days leading up to the culminating firestorm on the afternoon of 18 January. In fact, his latest expression of that alarming state of affairs was made in his written statement to the coroner on 12 March, with the words:

> I had no memory of any specific or direct contact of me by any person about the fire between the time of the cabinet briefing on the morning of January 16 and the call from Mr Keady at lunchtime on January 18.

Then it was disclosed last week that during this period there had in fact been specific and direct contact with the acting emergency services minister, Mr Stanhope, as well as attempts to make contact with him. In the case of the successful contact made, he continues to have no recollection of either its occurrence or its content. And the other party to that call, Mr Tim Keady, similarly has no recollection of the call having been made or of what it was about.

In the eyes of many, this state of affairs among those in senior positions of responsibility in the emergency services hierarchy, during an emergency situation, is very odd, to say the least. So, rather than jumping to conclusions based on what the men themselves are saying about what might or might not have happened, we need to look at this curious phenomenon a bit more objectively.

Before we go into detail, let us first note that both Mr Stanhope and Mr Keady held positions of serious responsibility and duty towards the wellbeing and safety of the ACT community. We may therefore assume that they hold or held those positions because they are intelligent, experienced and capable men who are dedicated to carrying out their

duties and responsibilities to the fullest extent of their abilities, and no more so than when they are called upon to show leadership in times of threat or stress to the community, that is, that they are, in short, up to the task and on top of their jobs.

Let us look now at some of the matters that arise from reviewing what has been reported. A check of the phone records of Emergency Services Bureau executive director Mike Castle has shown that he called the acting emergency services minister, Mr Stanhope, at 7.14 pm on Friday 17 January. Mr Stanhope said that the call went to message bank and contained no words. He, the acting emergency services minister at the time, says he had no memory of Mr Castle's call.

Bearing in mind that conditions at the time could be considered relatively threatening and therefore demanding the close and near-continuous attention of responsible officials up and down the chain of authority, the following questions arise. On the evening of 17 January, Mike Castle phoned the acting emergency services minister, Mr Stanhope, but did not leave a message. Why would he ring his minister and not bother to leave a message? Which of the minister's phones did he call? Having failed to talk to the minister on that phone, did he attempt to contact the minister on alternative phones available to him, as presumably any other conscientious official would have done? If not, why not? If he did try to contact the minister on all phones available to him, but failed, why was the minister apparently not contactable at such a time? If he did not persist in trying to contact the minister, was it because the matter was of no importance? If it was not of importance, why was he trying to contact the minister at that time of day? Has Mr Castle been asked what that call was about? If so, what did he say—if he remembers?

One of the differing versions the *Canberra Times* has put out in the last week reports that Mr Keady called Mr Stanhope at 9.10 am on 18 January 2003. The call went to message bank. Neither Mr Keady nor Mr Stanhope could remember that call or what it was about. Almost an hour later, at 10.09 am, Mr Stanhope evidently retrieved the message and called Mr Keady—although information in the Saturday 8 May *Canberra Times* records Mr Keady telling the inquiry that it was he who called the minister both times. The two men then spoke for almost seven minutes. Again, neither of them can remember that phone call or what was said during the call. This is an odd comment: if you cannot remember a call occurring, it seems superfluous to say you do not remember what was said during the call.

Is it not surprising that both of these apparently intelligent senior officials in positions of such responsibility have such poor memories that they can recall nothing of this conversation on the morning of a day that was not shaping up too positively for the ACT? Isn't the coincidence of these men's memory lapses more than passing strange? Are such seemingly muddled officials suited to occupy the positions they do? Can they be considered up to the job? Have they wound up in appointments beyond their natural levels of competence?

Mr Stanhope's apology for inadvertently misleading the people of the ACT was followed by some comments on radio and to my office suggesting that Mr Stanhope might have been suffering some sort of traumatic stress following his previous involvement in helping to rescue a man from drowning and that this "condition" might have adversely affected his memory. Up until this opinion emerged I was unaware that the specialist medical expertise that would enable someone to make such a diagnosis was held by quite

a number of Canberrans. My first reaction was to dismiss this suggestion as entirely subjective opinion, given that I clearly recall that, following the rescue, Mr Stanhope appeared buoyant and obviously delighted as he bathed in the very positive publicity and support he received from the people of the Canberra community as the rescue incident remained glowingly publicised. Does this apparent specialist medical expertise suggest that such buoyancy of spirit and pleasure in the post-rescue publicity are really typical symptoms of a trauma suffered by someone who has helped to save someone's life? I must say I find that hard to swallow. It looks more like a justification plucked out of thin air than an objective judgement.

If this theory of post-rescue trauma is put forward to try to justify the lapses of the acting emergency services minister, Mr Stanhope, can it also be used to explain the state of mind that seems to have coincidentally and concurrently afflicted Mr Keady? Is it possible that this "trauma" was contagious and that Mr Keady caught it from Mr Stanhope, despite the apparently infrequent contact between them? Should further expert opinion be sought on this likelihood? Seriously, with SARS and other new diseases popping up around the world we cannot be too careful and, if there is something out there, we need to quickly identify and control it before we are confronted with an amnesia epidemic. Given the high incidence of memory loss during the inquiries into the fires, maybe this insidious disease has already spread undetected through the ranks of those involved in emergency operations in January 2003. But maybe this opinion could be right, so we should get cracking quickly to pin it down and find a way to treat it!

From the *Canberra Times* of last Wednesday the 5th, I found that the theme of the meeting at the Emergency Services Bureau early on the morning of 18 January was "Preparedness for Evacuation". And I learnt from the *Canberra Times* of Friday the 7th that this meeting "was told the McIntyre's Hut fire could be in Canberra by the late afternoon". I also learnt that the meeting was "standing room only", so I guess it carried a sense of urgency. The 8 May edition of the paper records Mr Keady as saying that on 18 January he "did not attend an 8 am briefing at the ESB about preparations for evacuations".

Why, as reported on 5 May last week, did he say that, while he could not remember the call or what it was about, he "did not believe the call was about anything urgent or else Mr Stanhope would have come straight to the ESB"? He added that "the (two) morning phone calls would not be about the need for a state of emergency" because that issue "didn't arise until later in the day".

And why, to the coroner a few days later, did he say that, while he could not remember the 10.09 am phone call on 18 January or what it was about, it was inevitably about the bushfire emergency? Would not that have prompted even a vaguely involved Chief Minister/acting minister for emergency services to get over there quick smart to satisfy himself about the true state of affairs? Wouldn't it?

Why is it that I see a clear element of contradiction between these two statements—statements that were made only a few days apart? Why is it that I feel uneasy about the apparently unravelling threads of this changing testimony around and about the matters of urgency and non-urgency and of just popping in to the ESB of one's own volition as opposed to responding to advice that things were getting serious? Does this apparent contradiction mean that Mr Keady's memory is deteriorating at an alarming rate, or is in

fact improving? With so many others attending the earlier meeting on 18 January, which seems to have been very important, why was the acting minister for emergency services not interested in being there? Or Mr Keady, for that matter?

Did Mr Stanhope not know about such an important meeting? Had he not been told about this important meeting, perhaps? Was this what Mike Castle had been trying to inform him of the previous evening? If he had not been told, why hadn't he? Who should have told him? Couldn't he be tracked down to be told about the meeting? Where was he, if he could not be tracked down? Did he feel it was beneath him to attend that meeting? What was it that was occupying the mind of the acting emergency services minister at the time and took precedence over the potential emergency confronting the ACT? How could the responsible minister be so apparently detached and not contactable at such a time? Can such apparent detachment be considered responsible conduct in the circumstances?

There are many more questions that I could reel off, but I think I have seen enough to lead me to deduce from the facts presented that there is something very dubious about this litany of non-recollection. The pervasive, apparent loss of memory of the matters at the heart of a tragedy of such enormous proportions—a loss of memory that we have seen expressed by officials and others at various levels up and down the line—beggars belief. That so many presumably intelligent and responsible and experienced people have trotted out this common defence of their actions beggars belief.

The Chief Minister, acting emergency services minister at the time, demonstrated such apparently persistent detachment from involving himself, as any minister for emergency services would be expected to do in an emergency situation, that it is difficult not to conclude that his performance was seriously wanting.

The Chief Minister has claimed that after midday on 18 January he went over to the Emergency Services Bureau "of his own volition" to see how thing were going. He made no mention of a meeting underway there at the time—a meeting that, according to the *Weekend Australian* of 8-9 May 2004, had been going on since 8 that morning and was wrestling with the problem of whether a state of emergency should be declared. The paper reported that, when the Chief Minister/acting emergency services minister was asked for a decision, he said, "You're the experts. All I want is advice". The fact is that the decision being sought was not a decision from an expert in the matter of fighting fires; it was a decision from the Chief Minister of the ACT about protecting the safety of the people of the ACT. It was a political decision that was being sought, not an operational decision, although it would also be of operational benefit.

That single, undeniably weak response from the Chief Minister confirmed to me when I read it last Saturday that not only did he not have a grasp of the seriousness of the responsibilities that rested clearly with him and no-one else in such a situation, but that he also did not possess the basic attributes for the leadership needed when the chips were down. And this same sort of evasion of responsibility was reflected in testimony that the chief executive the Chief Minister's Department at the time gave to the coronial inquiry, to the effect that to have declared a state of emergency at that time, when Canberra had never before declared a state of emergency, would have been a dramatic response, only to the taken in the "most extreme contingency". What sort of comment is that?

The glaring fact is that it was a "most extreme contingency", and the way to confront a most extreme contingency is to invoke "a dramatic response". Avoiding taking a decision in such circumstances is a feeble clutching at straws. What were they afraid of? Were they afraid of being wrong? Maybe. And people who are afraid of being wrong are invariably unsuited to hold responsibility where hard decisions might be required.

It is my conclusion that, in the handling of that great tragedy last year—that truly "most extreme contingency" in which four lives snuffed out and over 500 homes were destroyed—poor leadership was a very significant contributing factor. Those who were leading at the time showed by their detached and even timid approach to the task before them that the people cannot confidently rely on them to provide the sort of leadership needed in such circumstances. This conclusion is influenced by no consideration other than my review of the facts. It has taken no account of the opinions of any other persons. And it is not based on personal feelings; in fact, I do not think the Chief Minister is a "bad" person, as such.

The circumstances of this tragedy bring to mind what Mr Stanhope said in this place in 1999 in relation to the Katie Bender matter. He asked the rhetorical question "How far into the operations of departments and agencies under his or her direction does a minister's responsibility extend?" And he answered it himself by saying that "ministerial accountability is absolute". Listen to the echoing ring of that comment, Mr Speaker: "ministerial accountability is absolute".

On that same occasion, Mr Stanhope also said, "The fact that so many Canberrans were put at risk represented, in the coroner's words, a total abrogation by the government of its responsibility to ensure the safety of its citizens". The Chief Minister needs to recognise that what is good for the goose is good for the gander. Accountability is not a moveable feast. As he himself said back then, accountability is absolute. *(Extension of time granted.)*

One final matter, Mr Speaker. I would like at this point to quote part of the lengthy conversation of a constituent who called my office a week ago with the firm intention of persuading me not to support this motion. This caller spoke well of the Chief Minister and subscribed to the post-rescue trauma theory. The caller spoke of hatred of the ACT Liberal Party for what they had done to me and said that I should do nothing that might help them regain power. The caller also raised the matter of the Liberals' own transgressions when in government.

Chat continued for some time about the December 2001 fires and the January 2003 fires in general. The caller spoke somewhat critically of the handling of the January 2003 fires but did not blame Mr Stanhope. On the evening of Friday 17 January the caller and some friends went up to the Red Hill lookout to look at the scope of the fire, because they were worried by developments. What now follows is an accurate rendering of part of that conversation:

> On January 17 we were up on Red Hill lookout, around 8.30 pm, very concerned about the fires. There were other people there and we talked to them about the fires. The atmosphere was very tense as we looked out at the 180 degrees arc of fires burning out to the west, and watched the McIntyre's Hut fire licking around the

> north-west edge of the ACT. While we were there some Emergency Services vehicles drove up and out got Jon Stanhope, Mike Castle and a number of other people.

The caller then continued to chat about the fires 12 months earlier that had gone from Red Hill down to near the mint. This information came directly to me and not via anyone else. I have not discussed this with anyone else until disclosing it today. Should anyone seek to imply otherwise because, as I learned just this morning from the radio, the opposition has received similar information, then I say categorically that that person will be a fool and a slanderer.

I have not taken any account of the opinions of others while I worked steadily through what facts I could find. I have reached my own conclusions independently. I said when I became an independent that I would assess matters on their merits. That is what I have always done, and that is what I have done in this case.

This examination of the facts has shown up what I would term a passive attitude in the Chief Minister towards his duty and responsibilities at the time of the January 2003 fires. I have concluded that, at least on occasion, he failed to do what I would have expected a leader to do. It saddens me to say it, but I find that, when he was needed, he was lacking in the qualities needed in such circumstances. I therefore seriously question his suitability for the position he holds. Therefore, Mr Speaker, I must uphold the principle of accountability and, with reluctance, follow my conscience and support this motion.

Sitting suspended from 12.34 to 2.30 pm.

MR PRATT (2.32): Mr Speaker, it is with careful consideration that I rise today to express my concern, dissatisfaction and loss of confidence in the Chief Minister as a result of his failures to recall important information that has ultimately led him to mislead the Assembly and the community. Overall, the performance of the Chief Minister from December 2001 to May 2004 has been questionable. His transparency with both the Assembly and the community has been questionable; his leadership during the January 2003 bushfire disaster was dubious; and his memory obviously leaves much to be desired.

I believe that it is the duty of all MLAs, especially the Chief Minister as the leader of the government, always to ensure that integrity, honesty and accountability are exercised. My belief is reflected in the ministerial code of conduct that was released by the Chief Minister on 12 February 2004. This code of conduct states:

> All Ministers are to recognise the importance of full and true disclosure and accountability to the Parliament. Under the ACT's Westminster-style system, the Executive Government of the ACT is answerable to the Legislative Assembly and, through it, to the people.

MR SPEAKER: Order, members! There are too many conversations going on. Mr Pratt has the floor.

MR PRATT: Thank you, Mr Speaker. I have considered this section of the code of conduct very carefully and related it back as best I can to the information that has been on record from the January 2003 bushfire disaster. I have asked myself if I truly believe

that the Chief Minister exercised, and recognised the importance of, full and true disclosure and accountability to the Assembly. I have come back unconvinced. The fact is that the Chief Minister did not exercise full and true disclosure of the facts.

This lack of disclosure and transparency was not only in the Assembly; he misled the Assembly, there is no doubt about that. However, he did not exercise full and true disclosure of the facts to the coroner, Ms Doogan, to the media, to the community and to those who lost their homes and the lives of loved ones in the January 2003 bushfire disaster. If there is no doubt—and there is not as the Chief Minister freely admits this—about the fact that he misled the Assembly and, through it, the people, then there is no doubt that he also misled the coroner, the media and those who lost their homes and the lives of loved ones.

The Chief Minister issued a media release on 5 May 2004 with the headline "Stanhope regrets disruption to Assembly business". In this media release, he states:

> I continue to regret my lapse in memory and stand ready to be judged by my fellow Assembly members.

The Chief Minister is not being judged by his fellow Assembly members; he is being judged by the people of Canberra. And the judgment has come back calling for his resignation. The media has reflected this community opinion for the last seven days. My office and the offices of my colleagues—and, I am sure, the offices of the government—have received letters and phone calls from the community also reflecting this opinion.

There may be some members here in the Assembly who believe that this is too serious a punishment for a Chief Minister who has misled the Assembly and, through it, the people of Canberra for the past 16 months. However this is not something that the Smyth Liberals have done without consideration. The Leader of the Opposition moved a no-confidence motion in the Chief Minister for a very serious reason—misleading the Assembly and, through it, the people of Canberra.

In response, the Chief Minister has stated, also in his media release of 5 May 2004, that "he was prepared to stand by his conduct in all aspects of the fire". If that statement is true, then he is obliged to stand down as Chief Minister here today.

The ministerial code of conduct states:

> Being answerable to the Assembly requires Ministers to ensure that they do not wilfully mislead the Assembly in respect of their Ministerial responsibilities. The ultimate sanction for a Minister who so misleads is to resign or to be dismissed. Ministers should take reasonable steps to ensure the factual content of statements they make in the Assembly are soundly based and that they correct any inadvertent error at the earliest opportunity.

Today I believe that members of the Assembly need to exercise the ultimate sanction upon the Chief Minister and dismiss him from the role he did not fulfil. It was from the close of business on 17 January 2003 that the Chief Minister assumed the position of acting minister for emergency services. This role was not to be taken lightly, as Canberra was under threat in two major areas from bushfires burning out of control. Therefore, the role of minister for emergency services was the most important role in the activities of

the January 2003 bushfire disaster. Indeed, it was the most important ministerial role performed anywhere in the territory that week.

As the acting minister for emergency services, it would be fair to assume that the majority of contact you would make—and I make this assessment myself—on 17 and 18 January 2003 would be with senior staff in the Emergency Services Bureau and the head of the Department of Justice and Community Safety, Mr Keady. Certainly as the shadow minister for emergency services that is the contact that I would ensure that I maintained. However, the evidence that we have to date, Mr Speaker, is to the contrary. During question time in the chamber on 10 March 2004, I asked the following question of the Chief Minister:

> Following clear advice from Mr McRae of the risk management unit on Friday, 17 January 2003 at 6.00 pm that the bushfires would reach Duffy at 20.00 hours the next day—

that is, 8.00 pm—

> what updates were you given on that evening regarding preparation for what was anticipated to be one of the worst periods for bushfires in the ACT's history?

The Chief Minister's answer to my question was:

> None.

My supplementary question was:

> Why didn't Mr Keady call you, given that he had received three phone calls that evening from the Director of the Emergency Services Bureau?

The Chief Minister's answer to my question was:

> I think that it is probably necessary for us to wait for Mr Keady to give evidence to the Coroners Court in relation to that. I have no idea why Mr Keady did, or did not, do anything on the evening of the Friday.

This cannot be believed. How did the Chief Minister not possess then or ever since the period in question the inquiring mind required of a true leader to determine what was in Mr Keady's mind at the time of making important telephone calls on days and evenings of extreme and dangerous activity? How is this Assembly to believe this?

Let's hear those incredible words again:

> I think that it is probably necessary for us to wait for Mr Keady to give evidence to the Coroners Court in relation to that. I have no idea why Mr Keady did, or did not, do anything on the evening of the Friday.

I put it to you, Mr Speaker, that these are carefully chosen words on the part of the Chief Minister, carefully chosen not so much for what they say as what they do not say. The obvious answer to my supplementary question would be:

> I have no idea why Mr Keady did not ring me.

Why not say that? Well, one reason might be that the Chief Minister did not want to say that Mr Keady did not call him because Mr Keady did call him, as we know now, not on the Friday night but on the Saturday morning and the Chief Minister already knew, at the time of my asking this question on 10 March 2004, that Mr Keady had called prior to his apparent spontaneous decision to visit the Emergency Services Bureau headquarters to see what was happening. So, we have the carefully chosen words "I have no idea why Mr Keady did, or did not, do anything," which, in the best lawyer's style, avoids admitting any knowledge not only of Mr Keady's motivations but his actions as well.

The community is heartily sick of this unstatesmanlike, evasive, lawyer-style defences—"to the best of my knowledge", "I cannot recall" and "I cannot remember"—to preface every answer. Today, here in his feeble defence against the charges in this motion, the statement which really takes the cake is words to the effect of "I was overwhelmed with information and consequently cannot remember the details of the phone calls" in question.

While it is only human—and one is justified from time to time to use these terms; we are all human and sometimes we have to use these terms—the community does not expect its Chief Minister to make these qualifications all the time and to offer absolutely nothing else, but that is what the community and we here in this place have become accustomed to. This is not statesmanlike; this is not transparency; this is in fact a form of misleading, and this is unacceptable.

On top of this, it is also clear that, as acting minister for emergency services, Mr Stanhope asked no questions and received no information in that critical period of time. This is beginning to be a recurring theme of this government: ask no questions, receive no information.

However, in the statement given to the Assembly by the Chief Minister on 4 May 2004, only 30 minutes before the ACT budget was to be handed down by his deputy, he admits that telephone records revealed that the then Executive Director of the Emergency Services Bureau, Mr Mike Castle, placed a call to his mobile phone at 7.14 on the evening of 17 January. This six-second call was diverted to his message bank and he did not recall receiving any message as a result of that call from Mr Castle. This revelation is contrary to all other information that was given to the Assembly, the coroner and the community during the previous 16 months.

The revelations do not end there. In his statement on 4 May 2004, the Chief Minister also reveals that his scrutinising staff found a telephone call made by the Chief Minister, our acting minister for emergency services, on 18 January 2003 to the head of the Department of Justice and Community Safety, Mr Tim Keady. The call was placed at 10.09 am and lasted for six minutes and 45 seconds. It appeared, according to the Chief Minister, that this call may have been in response to a call from Mr Keady to him at 9.10 am which was diverted to his message bank while he was having coffee with his wife.

It is true that the acting minister for emergency services did not ask any questions, but he would have received information if he had been disciplined enough to check his message

bank while acting minister for emergency services on the day, and the hours, leading up to the biggest bushfire disaster Canberra has ever seen.

Did the acting minister for emergency services live up to his responsibilities in that portfolio area and the greater responsibility of Chief Minister as well on 17 and 18 January 2003? The answer to that question is no. Therefore, I sincerely believe that the Chief Minister did not take "reasonable steps to ensure the factual content of statements in the Assembly were soundly based". Let's go back to our code. Remember that quote? Reasonable steps would have been to check his own phone records to ensure the factual content of his statements was soundly based—not to have a staff member suddenly discover these records and the information they held within them.

There is a related theme here, too, in the Chief Minister's behaviour: in relation to challenging situations, if you do not ask anything or if you do not volunteer any information or record anything—or, indeed, do anything—then you cannot be blamed when it goes pear shaped; there is no paper trail. *(Extension of time granted.)* This allows plausible deniability. That is the culture that has developed under this Chief Minister with respect to the governance of this territory—an abrogation of ministerial responsibility because retaining power at any expense is crucial in Labor's and the Chief Minister's thinking.

We know now that Mr Cheney's urgent advice and that of other experienced and expert people was ignored in favour of what has clearly turned out to be ignorant, flawed and horribly inaccurate advice from some bureaucrats. Where was the inquiring mind of this leader, both in his capacity as Chief Minister and as acting emergency services minister? Where was there then scrutiny of his people?

When it was raised with him why he had failed to take notice of the advice of Mr Cheney, he indicated ignorance of Mr Cheney's urgent advice of 14 January. He said:

> Those comments are news to me.

Either the Chief Minister was monumentally kept in the dark by his bureaucrats about expert opinion and situation reports during the bushfire operation or he has misled this place about Mr Cheney and Mr Cheney's advice.

I also sincerely believe that he did not "correct any inadvertent error at the earliest opportunity", to get back to that code of ministerial conduct. If the Chief Minister's statement that he made to the Assembly on 4 May 2004 is accurate, the discrepancy in his previous 16 months of statements and the phone records proving the contrary was discovered on the evening of Monday, 3 May 2004. Making the public statement about this discrepancy and his misleading of the Assembly at 2.30 pm the next day in relation to the phone calls with Mr Keady is, in no way and in nobody's language, the earliest opportunity.

The actions of the Chief Minister have clearly and blatantly breached his own ministerial code of conduct that states that the minister who does so "is to resign or to be dismissed". The actions of the Chief Minister have proven that he did not fulfil his responsibilities as acting minister for emergency services, he did not fulfil his

responsibilities to the Assembly and he most certainly did not fulfil his responsibilities to the Canberra community.

In addition to the core of this no-confidence motion I would also like to take the opportunity to put the Chief Minister's actions of misleading the Assembly into context. We know that after the December 2001 bushfires the Auditor-General's report made recommendations on the state of the Emergency Services Bureau. We were assured by Mr Quinlan, who was the minister for emergency services at the time, under the leadership of the Chief Minister, that the recommendations were being implemented and all was under control.

Yet the recommendations were not implemented and we faced the January 2003 bushfire disaster with the improvements needed within the Emergency Services Bureau and the warning system incomplete. Indeed, in answers to questions put by me about why the Chief Minister had not acted at all, let alone with urgency, to the recommendations of the Auditor-General's highly critical report handed down in May 2003, which said that the ESB was dysfunctional, the Chief Minister ridiculed the report. He ridiculed the advice of an auditor, yet another expert, just like he and ministers had ignored and ridiculed Mr Cheney and belittled the expert and experienced opinions of rural land-owners and bushmen and bushfire fighters who had been warning of impending disaster. We had to wait until August 2003 for the McLeod report to be released for the Chief Minister to take action.

The people of Canberra went through the January 2003 bushfire disaster being assured by the Stanhope government that all was okay when, in reality, the Emergency Services Bureau was suffering from operational and systemic weaknesses that had been brought to the government's attention with no action. The Chief Minister blindly accepted the 106 recommendations of the McLeod report before they were officially released to the public or the other members of the Assembly, and only then have things begun to slowly change for the better. However, when it mattered, when Canberra was under real threat of destruction, the Chief Minister's management of the Emergency Services Bureau and key departmental executives was ineffective, weak and ignorant.

All of these examples of failure to act, failure to follow up and failure to inquire, in the face of substantial evidence during and after a critical event, starkly point to the personal and professional failures of the Chief Minister that have pressured him to mislead. There is little in the way of an operational and emergency cultural make-up in his professional make-up, and this flows to his government.

The Chief Minister's failure to improve the governance of the Emergency Services Bureau after he was warned of its weaknesses by both the Auditor-General and the Liberal opposition is a failure to perform as the leader of the ACT government. In addition, his failure to set up reporting structures and his lack of emergency management as acting minister for emergency services has been highlighted many times over the past 16 months.

Let's return to 18 January and the Chief Minister's performance on that day. This is the acting minister for emergency services who did not think to call the head of the Department of Justice and Community Safety first thing in the morning of 18 January.

Surely he could have seen the smoke surrounding Canberra when he woke up. Surely that would have been enough to ask some questions for the safety of the city he is paid to govern. But, as I have said before: ask no questions; receive no information.

The Chief Minister's defence here today—"If I had been told such things do you think I would not have acted?"—this appeal to be completely exonerated, based on his character, his reputation and his claim of integrity, is simply not a defence which will hold up in any court in the land. In fact, his defence is a demonstration of false pride. This evidence of failure and inaction over the past 2½ years has led us to this point: it is the sole and solid reason—these failures which we have listed—that the Chief Minister should be directed to stand down, to resign.

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

MRS BURKE (2.55): Mr Speaker, I must make the comment at the start that we have had eight speakers, one being the Chief Minister, and I am surprised at the lack of support shown for the Chief Minister so far today.

The reason I and the rest of us are standing here today has no bearing upon the coronial inquiry or the outcome of it, as has been mentioned. It has everything to do with the Chief Minister and how he has most definitely and repeatedly misled this Assembly and the people directly affected by the January 2003 bushfires, most particularly the residents of Weston Creek, Kambah and the rural villages. Not to have proceeded with this motion of no confidence in the Chief Minister today would have been a dereliction of our duty collectively.

In this debate, Mr Stanhope has spoken much about his integrity and the value he places on his reputation. That is understandable. None of us likes to be criticised, particularly on questions not only of competence but also of honesty. But he is really saying here, "How dare you criticise me? I'm an honourable man." In asking us to accept his integrity, he is asking us to abandon our integrity. In particular, as do we all, I have a duty to the voters of the ACT to hold him to account for his leadership and his honesty, especially in relation to the portfolios for which I have shadow responsibility, and that is a responsibility I take very seriously indeed.

So I cannot just accept the Chief Minister's assurances that he would not knowingly mislead the Assembly or the people of the ACT. We owe it to those who put us here to look into this question properly, and not to allow our questions to be swept aside by this kind of egotistical bluster. I am very angry that the Chief Minister has placed each of us in the Assembly in this position. Chief Minister, believe it or not, your actions as Chief Minister reflect on every member of this place, on each one of us.

The Chief Minister continues to attempt to convince not only himself but also others that he has not been negligent in his duties and has not abrogated his responsibility. I refute that argument vehemently. It is appalling to think that this man thinks that we in this place will fall for the line he has spun us this morning. He must think that we came down in the last shower. Please! The discredited Carmen Lawrence defence is no defence.

The Chief Minister, after much debate, finally tabled in February this year his code of conduct for ministers, which he spoke about. Let us remember that he is not above this

code. Indeed, let us reflect on page 10, section 5, "Diligence", which reads:

> Ministers should exercise due diligence, care and attention, and at all times seek to achieve the highest standards practicable in relation to their duties and responsibilities in their official capacity as a Government Minister.

The questions I now feel it necessary to raise here today in regard to this motion of no confidence in the Chief Minister relate, in essence, to three things: firstly, the Chief Minister's honesty, integrity—which he goes to great lengths to tell us he holds very dear—and character; secondly, the Chief Minister's ability and suitability to lead; and, thirdly, the fact that this is not an isolated instance, as this Chief Minister has form.

A core tenet of gauging the fitness of any leader to lead must be an assessment of their honesty and their ability to lead. Both are even more important when a leader is under pressure. From a personal point of view, I take no comfort in questioning anyone's honesty or integrity; but, sadly and regrettably, I now have grave reason to doubt the Chief Minister on both counts.

We should all remember that there has been a pattern of behaviour, spoken about earlier, which I believe makes him unsuitable to hold the office of Chief Minister. Like every member of this place, including members of the Labor Party, I am in a position to and do have a responsibility to question the honesty, trustworthiness and leadership of the Chief Minister; in particular, with regard to the portfolios for which each of us on this side of the house has shadow responsibility.

With that in mind, I have no doubt that under pressure the Chief Minister, as is now emerging, has not been as forthcoming as he could and should have been. Of course, only he can truly answer that. As a result, we must seriously question whether Jon Stanhope has the necessary leadership qualities and integrity required for the position of Chief Minister. Indeed, as late as this morning, as members will have heard, uncertainties continued to emerge about the Chief Minister's contact with ESB officials prior to 18 January. In fact, Chief Minister, where were you on Friday, 17 January 2003?

It is now patently clear that he either conveniently forgets pertinent issues or says, "I was never told" or "I don't recall." I, like the majority of Canberrans, can remember everything about that fateful Saturday of the bushfires. Selective amnesia goes to the heart of honesty. The ability to deal with complex decision making under pressure and then accept responsibility goes right to the heart of leadership.

Let us not forget that these concerns, unfortunately, are not isolated to the January 2003 bushfires. My colleague and leader, Mr Smyth, alluded earlier today to several instances. But there have been other instances where the Chief Minister seems to have conveniently forgotten important issues, failed to provide the appropriate leadership for someone in his position and used public officials as scapegoats. The child protection scandal is such an example. Jon Stanhope acknowledged in an answer to Greg Cornwell on 12 February 2004 that John Hargreaves, the chair of the CSSE committee, told him the week before of the report into the rights, interests and wellbeing of children and young people, but he says that he did not understand the significance of it, or words to that effect. Was it that Jon Stanhope was not told in a way that he could understand?

When asked about when the matter of failures to report suspected cases of child abuse by the department was brought to his attention, Mr Stanhope was prompted by Ms Gallagher, who had to remind the Chief Minister that he was, in fact, advised on 11 December 2003. However, he told Brendan Smyth on 11 February 2004 that no-one from his department, including the Community Advocate, told him about the problems. In other words, Tim Keady did not tell him. It seems that this is a common problem.

Mr Corbell said on 13 February 2004 that the Community Advocate told him as a result of not one but two annual reports. Apparently, he asked for a brief and was supposedly told that it was being addressed. Can we now truly believe the Chief Minister's account? Are we now to wonder whether he was told and simply forgot or just did not act? Either way, I believe that the Chief Minister misled the Assembly over this matter. The government surely must have had some concerns about the findings of the committee in regard to a serious failure by the department of family services to adhere to reporting requirements under the act.

The added problem I have in this matter is that the Chief Minister is also the Attorney-General and has complete portfolio carriage of the Office of the Community Advocate. The question therefore is, and always has been: did the Chief Minister actually know about these concerns, or did he conveniently forget that he was told? If he did know, why didn't he act earlier?

If he did not know, why wasn't he briefed on such a serious issue by his own department, by his own advisers or by his own ministers, when the OCA's annual report for two consecutive years highlighted the seriousness of the problem, and again when the government's response to the August 2003 report was being prepared? Indeed, one might ask: did the Chief Minister have any telephone calls with anyone in regard to the failure of the department over two years to report child abuse, as defined in law? Is this an amazing coincidence, selective amnesia, phoney memory loss, buck-passing, or simply poor leadership?

There seem to be many parallels between this matter and the January 2003 bushfires. Indeed, at the heart of the matter before us today is a telephone call between the Chief Minister and his departmental CEO, Tim Keady, on the morning of 18 January 2003, the day of Canberra's worst natural disaster in living memory, references to which Jon Stanhope now seems to make light of. The Chief Minister maintains that he still has no memory of the call or what the call was about, citing quite lamely now that he believes that he had or still has some medical problem.

I put it to members that if he does have a serious medical problem that prevents him from remembering specific events, he should seek medical treatment and be discharged from his responsibilities immediately, otherwise how will he respond next time? He should not be Chief Minister if this diagnosis is correct. I suspect, however, that the reference to his so-called unindexed memory was no more than a ruse to avoid accountability.

It must be a matter of grave concern to every member of this place that disclosure and accountability in the future could be virtually destroyed by someone invoking the unindexed memory defence. It would set a new all-time low in parliamentary behaviour. Again, the question to be answered by every member of this place and indeed every

Canberran is: is this an amazing coincidence, selective amnesia, phoney memory loss, or simply poor leadership by the Chief Minister on such a serious issue?

We in this place must be mindful of living in glass houses and throwing stones. However, this Chief Minister has a track record of poor recall and poor leadership which alarms the people of Canberra. It seems that Mr Corbell thinks that that is amusing. There are still many questions yet to be answered by the Chief Minister, including the sighting by people in the community on the night of Friday, 17 January at Red Hill lookout.

The Chief Minister desperately continues to maintain the line that he inadvertently forgot one of the most important phone calls of his career to the CEO of the department of emergency services on the day the worst natural disaster in living memory hit Canberra. I am sorry, Jon, I just cannot believe that of you. It does not sit right with me. You are a man with a sharp legal mind. You are not a fool. Neither are we, nor are the people of Canberra.

MR SPEAKER: Order! Refer to the Chief Minister by his proper title, please.

MRS BURKE: I am sorry, Chief Minister, I just cannot believe that of you. It does not sit right with me. You are a man with a sharp legal mind. You are not a fool. Neither are we, nor are the people of Canberra. Please do not treat us or the people of Canberra in this way. To say, "I don't remember" is simply not good enough. To say, "I was under pressure" is not good enough and not acceptable to members or the people of Canberra, especially as he was relaxing over a cup of coffee while the ESB staff were in utter chaos and people in the suburbs who were depending upon him and his leadership were about to lose their homes and their possessions, with four people actually losing their lives.

The fact that Mr Keady was called back to the coronial inquest as a direct result of the telephone call revelation shows the gravity of the matter. The fact that the Chief Minister was afforded the same courtesy and declined the opportunity to put the record straight shows nothing more than his arrogant indifference and disregard for the members of this place and for the people of Canberra.

The role of Chief Minister is a position of great responsibility and such a person must have the capacity to remember important points and conversations with the most senior bureaucrats in this territory. Perhaps Mr Stanhope does not know what is said because he is too busy talking when other people are trying to point out some things to him—as he is now. Those bureaucrats are under his leadership. He is not paid to forget, nor is he paid to say, "I was under a lot of pressure". That is his job and if he cannot stand the heat he should get out of the kitchen. I am sure that Mr Quinlan would not knock back the opportunity to have a go.

This territory deserves better leadership and a chief minister who can handle serious issues when under pressure. I am sure that the Chief Minister knows that well, if only he were true to himself. *(Extension of time granted.)* To reiterate, this whole issue is about honesty and integrity in public office, leadership, and the ability of this Chief Minister to handle pressure and to be honest at all times. Of course, such a glaring oversight on his part is not an isolated occurrence.

The Chief Minister now pleads with us to accept that he cannot remember perhaps one of the most significant telephone calls of his career—so you don't think it was significant, Chief Minister?—from the head of the department of emergency services on the morning of the worst firestorm to hit the Australian Capital Territory in living memory, because he was under pressure.

Also, he now asks us to accept that he had no understanding, or was never briefed, on one of the most serious cases of neglect regarding the legal reporting requirements of child abuse in the ACT's history. We in public office have a responsibility to remember, not forget, these sorts of issues. We owe it to the community to provide strong and honest leadership. More importantly, we have a responsibility to provide strong leadership when under pressure.

In conclusion, this Chief Minister has poor form and has failed this Assembly, the Canberra community and, most importantly, the fire-affected people in this city, who deserve to have answers, not memory loss and obfuscation. His "I don't recall" excuse is nothing more than unacceptable and unconscionable. It is now well documented that a telephone conversation did occur. The fact that both he and the CEO of the emergency services department do not remember is, to say the least, very worrying, not least of all for the two men who are fast becoming known as the children of Carmen Lawrence.

The fact is that this Chief Minister has misled each of us and, further, has failed to provide leadership with regard to child abuse claims and the matter before us today, as others mentioned today, by avoiding his responsibility, by allowing other people to take the fall for his mistakes and bad judgment and by misleading people. This Assembly and every Canberran must ask: can we trust this man? Can we afford for this sort of thing to happen again? The answer, in my view, is a resounding no. We in this place must ask: did the Chief Minister mislead the Assembly? The answer must be yes, on the evidence provided. As a consequence, the Chief Minister must do the honourable thing of accepting the punishment for his grave mishandling and stand down.

MS DUNDAS (3.14): Mr Speaker, I would have liked to have heard more from the government in response to some of the allegations made by the opposition, but I understand that that will come later. I will speak on the evidence before me, then.

We have before us the question of whether or not Jon Stanhope holds our confidence to be Chief Minister of the Australian Capital Territory. This question has arisen because the Chief Minister came into this chamber and admitted that he had misled us and admitted that he had misled the community.

This motion before us is a very serious motion and I think all members understand that, but we must remain focused on what we are discussing. I have agonised over this vote—over the different things that I have heard, the different evidence that I have picked up on, and all the different things that we could be considering.

When I consider what could have happened on 18 January, I get very sad and I get very angry. I get very sad and very angry when I consider what could have taken place on 10 January or 3 January, or over the past five years or 10 years, in terms of what has been happening in the ESB, what has been happening in ACT Forests and what has been

happening in governments and bureaucracies around Australia over the past 10 years with regard to bushfire fuel management.

I believe that things could have gone differently and that if things had gone differently we might have been in a better position to warn people, lives could have been saved, and memories could have been saved. But within that personal anger that I feel and that personal sadness that I feel, I must focus on the question before us, that is, whether or not the Chief Minister holds our confidence.

The coroner has been tasked with investigating the January 2003 bushfires. It is a legal, court-based process. Even today there is more evidence being presented to the coroner from the chief of police operations and, from what I have heard, that evidence is incredibly interesting. In fact, all of the evidence that the coroner has been hearing over the past number of weeks has been revealing in some way. It has shown up some great failings and some very interesting discussions about what was actually happening around those January 2003 bushfires.

The coroner has a role to consider all the evidence, to sift through the different recollections, the different minutes and the different reports and chronologies, and to reach to the best of her ability the truth of what happened. This is a parliamentary assembly; it is not a court. We do not have all the evidence in relation to some of the serious allegations that have been made today.

To address quickly the allegations made this morning by members in relation to Red Hill: today was the first time I heard those allegations. If I were a court, I would have called witnesses to hear more evidence in relation to them. I fully believe that those allegations should be referred to the coroner. But we have not heard from the men named about whether they were actually up on Red Hill. We could call them, we could make them stand at the bar, but there is a coroner's process in train and it is for the coroner's process to look at that.

To focus again on whether the Chief Minister holds my confidence, let us look at the main question in relation to misleading the Assembly and the community. I went back and looked at *Hansard* over the last 16 months as to what the Chief Minister had said and I looked at what he had said to the community through the media. I refer members to the interview of him that was broadcast on 23 April on *Stateline*. The Chief Minister was asked:

> What would have happened if you didn't think to go off on your own bat to the Bureau?

The Chief Minister replied:

> Well, I think that's an interesting point, as at that stage officials—and there's a question to be asked there, why I hadn't been contacted of course, and I don't have the answer to that, but having said that, officials were doing what they could at that stage, and they were making the decisions that they felt appropriate at that time.

The Chief Minister went on to say in the same interview:

> I most certainly have certain issues around the fact that I was not advised at any stage by any of my officials…that is a significant issue, there's no doubt about that.

I think that the Chief Minister needs to look back at the statement that he made in relation to the admission that he misled us and apologise to those officials for those statements that he was making in relation to asking a question as to why he was not advised, because the record clearly shows that Mike Castle tried to contact him and Mr Keady did contact him. The fact that he has no recollection of that should not reflect poorly on those officials.

I think that every member of this place agrees that we have been misled. That is something the Chief Minister has admitted. During the debate there has been a lot of discussion about the ministerial code of conduct and about statements being factually based to the best of somebody's knowledge. We had the situation arise that the Chief Minister misled us because he did not check the record and relied on his memory.

I think that raises some interesting questions about the Chief Minister's record-keeping standards and why he did not choose to check the record for 16 months after the bushfires. The Chief Minister has said that maybe he misguidedly relied too heavily on his memory. I hope that is giving him reason to think about the future and what he will rely on his memory for in the future.

I think that it shows flaws in the way that the Chief Minister keeps his records and conducts his business, that he could so confidently stand up here over 16 months and not only say that he was not told but also question why he was not told. He should not have kept making strong statements without checking his records without knowing whether his record keeping was adequate to support his statements.

The fact that the Assembly and the community were misled is inexcusable. Now that we have reached that conclusion, we must decide what we are to do about that. The members of the government probably will be putting forward the argument—we have not heard from them yet—that Mr Stanhope misled us and he has apologised for that, so there is no reason to take this matter forward any further.

Members of the opposition have put forward the case that he has misled us, not only in regard to the matters that he has admitted to but also in many other ways, and for that reason they no longer have confidence in him. As I said, I have considered the matter by looking over *Hansard*, by talking to the Chief Minister and by listening to all the evidence put forward today and I will say on the question of whether the Chief Minister holds my confidence as Chief Minister of this Assembly that he holds it no less than he did before he admitted that he misled the Assembly. So, on that decision, I cannot vote for a motion of no confidence.

However, as Chief Minister, Mr Stanhope has responsibility for decisions that he has made. He has ministerial responsibility for decisions of his department. We cannot go back in time and stop the fires, but we must learn from our mistakes. The Chief Minister must put in place programs that ensure that the advice he receives is not forgotten and that his records are regularly checked.

In light of that, the Chief Minister should not walk out of this Assembly today without having the Assembly make the statement that we hear loud and clear that he misled us and that that is inexcusable; without the Assembly expressing grave concern at his conduct; and without the Assembly putting clearly on the record that we note what he has done and are unhappy about it. The Chief Minister cannot walk away from the Assembly today with a clean record, because what he has done is inexcusable—he has said that—and he should learn from it. We should all learn from it. So, to that end, I will move an amendment to the motion. I move:

> Omit all words after "has" (first occurring), substitute:
>
> > "misled the Legislative Assembly on the question of advice given to him and contact made with him during the period 17-18 January 2003 regarding the 2003 bushfires, this Assembly expresses its grave concern at the conduct of the Chief Minister, Mr Jon Stanhope MLA.".

I have moved the amendment because I believe that it is the right thing to do. I believe that it is important that it is shown on the Chief Minister's record that this Assembly did not just accept his apology and let him walk away, that we made it clear to him and to the community that we were concerned about his conduct.

I want members to consider this amendment, because between the Labor Party and the Liberal Party we have two positions: that he lose his job, that he be given the most heavy form of justice that this Assembly can bring down, versus nothing at all. I think both those positions are untenable. That is why I have put forward this amendment. I think that I have put forward the reasons I have done so and I hope that members will consider it as the best option.

I would like to say that this amendment does not mean that I am backing away from ever considering a no-confidence motion against any minister in this place; but, on the evidence before us generally and the evidence before us in the Assembly, I cannot see how we can ask the Chief Minister to step down. The coroner is still working through all of the evidence. We are yet to hear from the coroner about where the core of truth lies. But we have had an admission from the Chief Minister that he did something inexcusable and we should recognise that. I commend the amendment to the Assembly.

MS TUCKER (3.28): Mr Speaker, I am concerned as well that we are not hearing from the government through this debate. I do not know why. It seems as if some kind of game is going on and I do not think that it is particularly useful that no-one has spoken from the government except the Chief Minister.

Mr Quinlan: We have to hear what they have to say first.

MS TUCKER: There are a few of you that could be responding. Anyway, this no-confidence motion has been put by the Liberals because of the misleading of the Assembly by the Chief Minister regarding contact he had with the ESB at the time of the fires. As everyone is aware, the Chief Minister acknowledged and apologised for that misleading in last week's sitting, explaining that he had failed to recollect a phone call with Tim Keady and that this had become apparent when phone records were checked. He has also said that he continues to have no memory of that call.

The opposition in their arguments have linked this error with more general allegations about mishandling the fires and are basically asserting that this is all a part of a broader cover-up. These are serious allegations and the questions raised are currently the subject of a coroner's inquest. In my view, a move to have the Assembly cast judgment at this stage would pre-empt and even be disrespectful of the work of the coroner's inquest.

I have been reminded that the opposition took a quite different approach in government when trying to deal with the tragedy of the implosion. If my memory is correct, there were claims of sub judice when questions were asked and there was a refusal to allow an independent inquiry to run in parallel with the inquest. As far as this Assembly goes, though, in this instance there has been an extra inquiry, the McLeod inquiry, which no-one tried to stop, but this time round the Liberal opposition actually tried to enhance its powers and, as well, have now put up this no-confidence motion.

It is important to judge any serious situation, such as the fire, on its merits. We need to understand the full story and not leap to condemn just because there is an understandable level of hurt and anger in the community. In my view, it is very important to make clear what this no-confidence motion is actually about. It is about a misleading of the Assembly. It is not about how the fires were handled.

The coronial inquest is the place where we will get the facts about the whole sequence of events, not just about one forgotten phone call. Questions about the fires and the responsibilities of people for dealing with them have to be addressed in the context of all the circumstances, including the work of previous years, if they are to lead to useful outcomes.

While much of the heartache at the moment is about the question of what went wrong or what opportunities were missed in the 10 days leading up to 18 January, I do feel that it is important to raise at least briefly some of the history, because this is not the first time that we have had to look very carefully at the threats and realities of bushfires. Any useful analysis has to include the lessons learned from previous inquiries and government responses or lack of them.

I noticed that Brendan Smyth mentioned the 2001 fires and accused the government of not taking notice of lessons learned there. I do not disagree with that, but would point out that the Liberals did not support my motion after the fires to reconsider the land use before replanting pines.

The 1994 McBeth report on the fire hazard reduction practices of the ACT makes salutary reading. McBeth emphasised the fundamental need to engage the community in general, not just the government, specifically emergency services, in order to plan for and mitigate the ravages of bushfires. He found that without significant change to the general approach of the Canberra community and the relevant agencies:

> …it is inevitable that significant loss of assets will accrue together with loss of life during the next single, multiple or conflagration fire event. The urban rural interface will obviously bear the brunt of such losses…It is not if such a disaster will occur but when.

McBeth made a number of findings that were highly critical of all land management agencies, particularly reflecting on their lack of expertise and resources dedicated to fire hazard reduction and so on, and found that there was no coherent government vision to deal with these matters.

McBeth referred to a document prepared by Mr Chaney from the CSIRO for the ACT Bushfire Council in its submission to the Hannon Group review in 1991. Chaney made similar points—in particular, that without active involvement of the community in fire preparation and defence, a conflagration fire would overwhelm the firefighting resources of the ACT, leading to severe suburban damage. In other words, people on the urban fringes needed to be prepared for some involvement in defending the properties against fire.

In March 1995, in response to the McBeth report, the then Minister for Emergency Services, Gary Humphries, established a task force to look specifically at fuel management practices in the ACT. The task force included the chief fire officer, firefighters, ecologists and conservationists. It reported in August 1995.

Two of the subsequent recommendations focused on community awareness and education programs and four centred on urban edge guidelines and relevant building standards that took into account bushfire hazards. It does not appear that those recommendations were put into effect. I am very interested in how the history of these bushfire concerns informs our final analysis of where we have failed in our preparation for these fires and in our handling of them.

The point about the 1994 and 1995 recommendations is that work on the public awareness and participation parts of the process does not seem to have taken place. If these activities had been more energetically pursued, arguably we would all have appreciated the danger more clearly. The communication and mobilisation protocols would at the very least have been considered ahead of the fire striking us.

I raise that because I think it is important. I notice that Mr Smyth speculated so much in his speech—"What if? What if? What if?" While that obviously suits the Liberals' agenda at this point, it is not in the interests of the ACT just to do that. We have to look at all the "what ifs" and take into account all this work, good work, that has gone on over the years and has not been taken up. Really, what is coming out of that work is that anyone and everyone concerned with managing the emergency would have been better prepared to consider the worst and act on that possibility and we might not be looking at a phone call as the signifier of our inadequate response.

The first investigative process in the ACT since the January fires was the McLeod inquiry, which had a very limited brief. I heard Mr Smyth say as part of his case that the Chief Minister was misleading about the McLeod inquiry. I do not quite know what he said—I would have to look at *Hansard*—but Mr Smyth seemed to be implying that the Chief Minister had made statements about the nature of the McLeod report which were also misleading. My memory of the McLeod report was that it was not going to duplicate the coronial process. It was put in place as an administrative review to see what could be done by the next fire season. It was not claiming to be what Mr Smyth apparently said. I do not want to misrepresent Mr Smyth, but I was concerned about what he said.

I am not quite sure how satisfactory this limited brief process has been in giving us a detailed analysis of exactly what happened in the lead-up to and dealing with the fires; but, as I said, we have the coronial process to look at that and get a more detailed understanding and the new legislation, the new leadership and the reorganisation of the very structures that have taken place as a consequence of the McLeod inquiry would, at this stage, appear to be a step in the right direction. We await the results of the coronial inquest.

The thing that is most important to me is to understand what happened, why there was so little warning, why systems failed in so serious a way, and what has been done to prevent such happenings again. Decisions about any punishment and retribution also must be made in the context of full information.

My heart goes out to the many people of Canberra who suffered and are suffering so much. Like most people in Canberra, I have personal friends who lost their homes and have seen the trauma. I believe every one of us feels deeply the pain the fires brought to the ACT. This week I received a message from Richard Arthur of the Phoenix Association in which he made some points rather well. He has given me permission to quote the following from his message:

> The Association believes that, irrespective of the outcome of the debate—

that is, the debate today—

> it is vital that the Assembly sends a message of moral support to those who are still trying to make sense of their devastated lives.
>
> Ever since the fires 12 months ago, the people in the affected communities have wanted to know why they were not warned that the fires were coming. Each time they get together, the conversation sooner or later turns to that question, and it comes back frequently in private moments.
>
> Whether it was a grandmother's photograph, or a first baby's bootee, people are mourning the loss of their most precious, and irreplaceable, objects. They will feel that loss for the rest of their lives. As they do, they will recall how just a few hours warning would have given them the chance to gather those special things together and get them to a safe place. Some will think that they might even have had the chance to organise friends and relatives to be present to help save their house.
>
> Others, who might have thought they were lucky that they did save their house, are now trying to come to terms with the drastic changes around them.
>
> As they think "What if…?", they will again wonder why they were not warned. Not to know the answer will make them feel hurt and frustrated. To think that there is someone who knows the answer, but will not disclose it, will deepen the hurt, and turn that frustration into anger.
>
> Understanding why something dreadful has happened to them gives a person the best chance of accepting their fate and getting on with their lives.
>
> It is not right that people who have already been hurt so much should have to deal with these additional, unnecessary, emotions for the rest of their lives.

> The lack of an explanation has caused, and will continue to cause, much unnecessary grief. It is a major obstacle in the path of the recovery process.

The sentiments expressed in this message reflect the reality for many Canberrans. I recognise that the Chief Minister's forgotten phone call has been the proverbial last straw for some people. While I do understand that and do not in any way judge those who feel that this motion should succeed because of failures in the management of the fire disaster, I have to look at this motion for what it is, and it is not about how the government handled the fires. It is about misleading the Assembly. It is about whether Jon Stanhope lied to the Assembly. It is a motion based on the understanding that the Assembly must not be misled by any member and that, if it is, that member must be brought to account.

In looking at the question, an obviously important consideration is whether the misleading was intentional or whether it was wilful misleading. As I have said, I do not believe that it was an intentional misleading by the Chief Minister and there has been no evidence given to support this.

I accept Jon Stanhope's explanation that he forgot the phone call and I do not believe that he would lie about it. No matter how many assertions and allegations and how much speculation comes from the opposition on this matter, I will not hang someone on suspicion. I know that some people have said that this is the same as the no-confidence motion in Kate Carnell over Bruce Stadium and I am somehow being inconsistent, so I will briefly point out why I do not see substantial similarities.

Obviously, the Auditor-General's 12-volume report is available for those who are interested in the detail. But even prior to the Auditor-General's report there were three legal opinions saying that the expenditure of $9.7 million without appropriation was illegal. There were already comments made by the Auditor-General through the estimates process and other documents made available to members. There was evidence of a $9.7 million overnight loan, a breach of the financial management guidelines, and attempts were made to amend the guidelines retrospectively in order to legalise these actions. That was evident before the Auditor-General's reports came out.

On the question of my support post-implosion of a motion of no confidence in Kate Carnell, it was established that she had set up a political decision-making process that led to a diminishing of expertise in government, a loss of accountability and, in the end, a poor decision-making timeframe and a tragedy. In this situation, however, we have a forgotten phone call and a subsequent misleading of the Assembly. This misleading was acknowledged and an apology was made by the Chief Minister after checking legal advice regarding the status of coronial evidence, as Mr Smyth checked when he experienced a similar circumstance.

I noticed that Mr Smyth claimed that it is a significant issue that Mr Stanhope did not come into the chamber in the morning but, as Mr Smyth said, he took the time to check, as did Mr Stanhope. There was a different time period in the checking, but I think the explanation is reasonable.

I am interested in Ros Dundas's amendment because I do think that it is of concern that there was not greater attention paid by the Chief Minister after the event to clarify exactly what had transpired over those days. The opposition's focus in question time on communications between him and public servants should have been a trigger for careful checking of phone and conversation records, particularly as under stress the human reaction can be to forget things.

Jon Stanhope, having experienced the frightening incident of the helicopter accident, as well as the fires themselves, was, as were many people, under a lot of stress, but particularly so, I would suggest, he was under stress because of the helicopter incident. This lack of care has led not only to a misleading of the Assembly but also a lot of distress in the community, as illustrated by the comments I read of Richard Arthur. I will support the expressing of grave concern about this oversight.

I want briefly to comment on Mrs Cross's rather sarcastic and unpleasant comments on the effects of trauma; in particular, her claims that Jon Stanhope was appearing buoyant and basking in the glory after the helicopter incident. I recall asking him how he felt after this incident and the comment he made was far from buoyant. I hope that he does not mind my saying that, but I remember that conversation very clearly.

Basically, he said that he was devastated, that he felt that he should have known more about CPR and lifesaving techniques, and that he would do a lifesaving course. I understand that he has done that. He said that he was extremely uncomfortable with the label of hero and actually felt more than anything that he was inadequate in this situation. (*Extension of time granted.)*

I return to Richard Arthur's comments and the need for there to be moral support for the fire-affected in our community. I put it on the record that I believe that, despite the different views held in this place today regarding this motion, we are all aware of and empathise with the struggle that is still the reality for many as they deal with the consequences of the fires; that we understand that, reasonably for many, closure requires an understanding of what went wrong; that the current daily reports in the paper, on television and in radio reopen wounds; and that we regret that it takes as long as it does to find answers to the questions through the coronial process.

I am sure that we all sincerely hope that the coronial inquest will bring about answers to the questions that we all have and that we can work from there to ensure that, as much as is possible, we have an emergency services response in place which will prevent such a tragedy occurring again.

MRS DUNNE (3.45): Mr Speaker, I am overwhelmed by the lack of support the Chief Minister has from his own members, who do not have the fortitude to stand in this place and support him. Today we are witnessing the birth of a phenomenon and any wrong decision we make will go down in history as the Stanhope defence. When we asked why the citizens of Canberra were not told they faced an imminent threat from the bushfires, we heard what might be called the Stanhope defence, mark 1—"I didn't know, I wasn't told and I didn't speak to anyone." This is a fairly standard political dodge.

What really deserves the naming rights, though, has been the Chief Minister's original work in raising amnesia to an art form. If you say, "no-one told me", then, given the inconvenience of modern phone records, you may be shown to be, if not deliberately lying, at least wrong or at least misleading. But if you say, "I can't remember being told" then no-one can give you the lie. The advantage of this approach is that it leads discussion away from the realms of fact and record and into areas where there is no hard data available.

When queried about briefings or meetings, the response is that the information content has been lost, often literally, and all that remains is the impression of alarm, anxiety, concern or complacency. So we are reduced to a debate based on the Chief Minister's emotional state and, as it turns out, the Chief Minister is no less at sea than the rest of us when it comes to his emotional state. He, too, is reduced to guess work.

Based on his actions, he says, "I can't remember but I can't have been very alarmed or I would have done something." This means that when phone records revealed he had received phone messages and had spoken for 6¾ minutes to at least one person who might have been expected to tell him about the situation, he could easily switch to the Stanhope defence, mark 2—"Well maybe I did but I say I can't remember the conversation and you can't prove differently." As we know, the Chief Minister has also consistently stated that he is not an expert, that he did not have operational control—the implication being that he would not have known about the risks unless someone told him.

What is wrong with the Stanhope defence? First, being a minister, and particularly the Chief Minister, is a privilege not a right. An investigation into the conduct of a minister does not proceed on the same assumption as a criminal trial or even a coroners court. Our society places such value on individual liberty that we deem it better to let 99 guilty men go free than imprison one innocent man. If there is reasonable doubt of the defendant's guilt, he is acquitted.

Contrary to what Ms Dundas said, this place is a court. This is the highest court in this territory. But here, the person who is on trial is the highest public office holder in this territory, and we do not have the same standards for the holders of high public office. Ministers are acting on behalf of citizens. We do not want a minister to remain in office because there is a chance that he may not be corrupt, dishonest, negligent or even incompetent. We may not even want our territory to be run by people who are probably not corrupt, probably not dishonest or probably not negligent. The principle here is not the right of a minister to hold office but the right of a citizen to be governed by someone who is at least honest and basically competent.

The second problem with the Stanhope defence concerns the doctrine of ministerial responsibility, and many have spoken about this here today. Ministerial responsibility does not mean that ministers, like other mortals, are responsible for their direct actions. For one thing, even ordinary mortals are responsible for what they fail to do. There seems to be a common belief, especially popular in this government, that sins of omission are somehow less serious than sins of commission; almost, it seems, a belief that if you do nothing you will not get it wrong and you will not get into trouble. If you

want to illustrate the folly of this view it would be hard to go past the example of someone in a position of responsibility who does nothing when a fire breaks out.

Ministerial responsibility is about more than what you personally did; it is about more than what you failed to do; it is about more than what you directly instructed subordinates to do, or what you failed to instruct them to do; it is even about more than what you knew they were doing. In the strict, formal sense—one might say in the Stanhope sense, on the basis of his previous comments in previous no confidence motions, as referred to by my colleague Mr Cornwell—ministerial responsibility means that you are responsible for what happens in your department on your watch, whether you know about it or not.

It was put most succinctly by Harry S Truman when he said, "The buck stops here." This is the absolute version, as developed in the 19th century along with the Westminster system and as previously espoused by Jon Stanhope before he got into government and decided that misleading was okay so long as you could not prove it was deliberate.

In practice, the view developed in most Westminster jurisdictions in the course of the 20th century that, as departments of state and machinery of government have become larger and more complex, it was not reasonable to hold a minister responsible for everything that happened on his watch. Some decisions were too technical, others too trivial, and others handled at so many administrative layers below the minister that he could not be aware of them all, even if he wanted to. I think most of us—perhaps all of us now—accept that.

But it must be obvious that the decision not to warn the people of Dunlop and Weston Creek in particular that their houses were in dire danger of burning down was neither technical nor trivial. Nor was it far removed from ministerial oversight. The decision had to be taken by the minister or by one of his immediate subordinates. So if he did not know what was happening and he did not ask about the dangers, he should have.

There are two excellent reasons for this. The first is that we want a political culture in which records are kept, notes are taken and held on to, questions are asked and answered and we learn from our mistakes. We do not want a political culture based on plausible deniability. We do not want a political culture where the imperative is to shield the minister from knowledge that may subsequently become embarrassing. We do not want a political culture based on "If at first you don't succeed, destroy all evidence that you tried".

We demand the whole truth and we will not settle for anything other than the truth. So we need rules that create an incentive for ministers, and that is why we are here today—to create an incentive for all of us to follow the rules. We need to create the incentive for ministers to ask the hard questions, to require staff to tell them what is going on. When things go wrong we have to ensure that it is in a minister's interest to find out what the problem is and address it. When a minister says he didn't ask, the obvious question from us should be, "Why not? Why didn't he ask? Why was he drinking coffee? Why was he doing all these things and suddenly remembering all these things?"

When a minister says, "They didn't tell me," even if we believe him, we have to say, "Then you should appoint people who will tell you and ensure that they do tell you."

This is what ministerial responsibility is about. It is making sure that communication is open, and what we have seen today, laid out by Mr Smyth, is a whole range of material that ensured that nobody told anybody, and if they did, they have shut up about it.

When a minister says, "I relied on my memory and it must be incomplete or un-indexed," we have to be prepared to say, "Well, you should have kept records and you should have consulted them." We should not be prepared to accept qualified answers to questions when records exist or ought to exist. We have to treat failing to ask the question as seriously as asking the question and failing to act on the answer, because in doing this we are addressing what might be called the Bill Clinton class of dishonesty—the attempt to mislead people without telling outright lies for moral or Machiavellian reasons.

The second reason for not allowing the Stanhope defence deals with a less subtle dishonesty. In practice, the great problem with accepting, "I didn't know, I wasn't told," and especially, "I don't remember," as an excuse is that it is simply too easy to lie about it.

Ministers wield a great deal of power in our system, but with great power comes great responsibility. There are widespread concerns expressed by people on both sides of politics, and those on neither, about the increasing politicisation of the public service. If we accept the Stanhope defence, we can expect it to spread through this territory like Patterson's curse. We will have given every minister, every staffer and every public servant an unlimited get-out-of-jail-free card. It will say, "I can't remember." The Chief Minister seems to imagine that if he prefaces every statement with "as far as I can recall," he can never be accused of misleading. You just need to say, if caught out, "Whoops, I made a mistake but at least I didn't tell a lie, I don't think." Do we really want every answer to every question without notice to be prefaced by "as far as I can recall"?

The reality is that if a minister says, "no-one told me" or "I never asked" or "the notes were lost," we will almost never be able to prove beyond reasonable doubt that he is lying. We will almost never know if the notes had been lost on his instruction. We will not know if public servants who also cannot remember are telling the truth, covering up for their minister out of loyalty, or are just being instructed to blatantly lie.

Given this, there are two choices. We can demand conclusive evidence of a conspiracy before action is taken, and we know that if we demand written evidence of a conspiracy we will simply create a culture where nothing is written down. This will relieve us of the stress of penalising people, and after a time it will no longer be worthwhile even to ask questions about the propriety of ministerial actions. Ministerial action will go unchecked. Or we can do the courageous thing: we can do what we are paid to do. We can take the view that in terms of the public interest, a minister who genuinely does not know what is going on, who does not ask the difficult questions, even through incompetence or a desire to avoid incriminating evidence, is just as bad, absolutely as bad, as one who has the information but lies about it.

Mr Speaker, we have had a lot of evidence put before us today. A lot of material has been put forward by the members of the crossbench and members of the opposition. But the Chief Minister, the only person who has spoken on behalf of the government, did not

give answers in his tightly scripted reply to Mr Smyth to any of the material laid out by Mr Smyth. Since then other issues have been laid before us that need to be answered by the Chief Minister. We need to know, as many people have asked, where he was on that fateful Friday and Saturday. What was he doing? Accordingly, Mr Speaker, before Mr Smyth sums up at the end of this debate, I propose to move to suspend so much of standing orders as would prevent the Chief Minister from being given unlimited time to rebut the issues that have been put before us.

In summary, I, like the other members of the opposition, do not believe the claims of collective amnesia, the loss of notes or the failure to take them. I know what I was doing that day. I drove to the coast after I heard the announcement on the 12.30 news that there was no chance that the fire would come to town. I particularly remember that this warning was not given. Some elderly friends of mine almost died that afternoon because they believed that they would have been warned. They believed that a government that had warned them the previous year of the danger would warn them if conditions got bad. I doubt they will make the mistake of trusting this government again.

But that is not what is really at stake today. The issues are, first, that if we want a territory that is governable in the long term, not based on the need not to know, we cannot accept "the dog ate my homework" as an excuse. "The dog ate my homework" is not a legitimate response to an attempt to discover what actually happened. *[Extension of time granted.]* The "dog ate my homework" response to a legitimate inquiry is not the answer that we need to discover what actually happened on the day of the biggest disaster in our history.

Secondly, if the claims of memory loss, lack of communication, failure to consult or even to keep appropriate records, and the failure to ask obvious questions were true, they would expose a level of incompetence, indecision and negligence which would be even worse than the alternative scenario of knowing the truth, failing to act, and then lying to cover your tracks.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, and Minister for Sport, Racing and Gaming) (4.01): Mr Speaker, let me observe first that I think it is quite clear from what has been said today that virtually every member of the opposition has, in the language they used, called Mr Stanhope an outright liar one way or another. Each of those speakers did actually use terms like that. Some virtually said nothing else in their speeches, and Mrs Burke still remains the champion handwringer of the Assembly.

Let me say this: I am, of course, concerned about this sort of issue. But this is a house of politics and we can understand that the motivation is politics. During his speech, Mr Smyth made great play of the public derision that has arisen out of this and been visited upon Mr Stanhope, and that is certainly the case. It is the case that if mud is slung some sticks. Fortunately, some sticks to the hands of the slinger, and I certainly hope that that is the case today. I know from some of the people I have met from time to time that that is the case.

I notice that Mr Smyth was very quick out of the blocks in his speech to point out that he had to rationalise and correct in this place a misleading that had been directed at him. He described what he did as honourable but still went on to call Mr Stanhope a liar in so

many ways. During his speech he built a case and used the term "we can only speculate". And boy, did we speculate! The whole case was built on invention.

So let us go through some of the inventions incorporated in the case that Mr Smyth put and to which his partners in the opposition added nothing. Invention No 1 relates to the call of Mr Castle on the Friday night. Six seconds: Mr Smyth exhorted us to look at our watches, watch the sweep hand and realise that six seconds is a long time and a lot of information can be transferred in that time. Let me tell you, Mr Smyth, I rang Mr Stanhope's mobile phone at lunchtime today. By the time the greeting was completed and the beep went to start the message, six seconds had elapsed. In fact, Mr Smyth, it was not possible. If you had thought about it, if you had done your homework, you would have realised that a message could not have been left on a six-second phone call. But don't let that concern you. You have actually peddled into the public forum that message about Mr Castle's call to Mr Stanhope. Well, he could not have left a message. But don't let that stay your hand. What we had from that was, "There must have been a reply phone call." So we then invented—invention No 2—a call between Mr Stanhope and Mr Castle arising from the message that could not have happened.

Invention No 3 was the content of the Keady discussion with Mr Stanhope on Saturday morning. Must have been—there was a firestorm later that day; someone must have foreseen it. Two of your guys were down the coast; they were working off the information that was given through the media. And isn't it possible that Mr Stanhope was receiving the same material that the media was receiving? I think you have to at least admit the possibility that what Mr Castle was saying at 9 pm in his interview to the *Canberra Times* and what was published in the paper—Megan Doherty, published in the paper on Saturday morning; Mr Castle's information, 9 pm Friday, three hours after the non-message on Friday evening—was not a message of panic. But somehow you could invent that.

There were assurances coming out of the Emergency Services Bureau on Saturday morning and I would have thought it is distinctly possible that reassurances were still given on the Saturday morning. I cannot speculate, and I will not speculate, on what was in the call that Mr Stanhope made to Mr Keady, but what I can say is that it is highly unlikely that this was a call of emergency, and the events that occurred beyond that followed. There is no motivation—this is one of those cases that have no motivation.

Let us go to invention No 4. Mr Smyth was then able to tell us what happened at the cabinet meeting, and that the cabinet meeting should have caused panic. Well, I was at the cabinet meeting and, ladies and gentlemen, you have my word—

Mrs Dunne: You are just as complacent as everybody else.

Mr Pratt: That's what you get—

Mrs Dunne: You are just as complacent as the rest of them.

MR SPEAKER: Order members! Mr Quinlan has the floor. Please, Mr Quinlan, direct your comments through the chair.

MR QUINLAN: You have my word that there was nothing, there was no message of impending disaster at that meeting. I have previously in this place described how I changed my arrangements at the weekend because I do recall that one item out of that meeting was the prediction of a 40-year weather disaster. And I do not recall a message of impending disaster. Mr Wood, as far as I know, does not recall that. Mr Corbell doesn't. Ms Gallagher doesn't. Are we all liars? And for what purpose?

What we are saying about the content of the cabinet meeting is confirmed by the Castle interview a day and a half later. At nine o'clock on Friday, Mr Castle was publicly putting out a reasonably reassuring message, and certainly not messages of impending doom. But somehow, in the creative mind of Mr Smyth, he would have been giving us a different message two days before. That just beggars belief.

Invention No 5: Jon Stanhope was sighted at 6 o'clock on Friday night on Red Hill with Peter Lucas-Smith. This was referred to by Mr Cornwell, by Mr Stefaniak, and I think by Mr Smyth. Mr Smyth, while he was on his feet, tabled some minutes, as part of his case, of a meeting at 6 o'clock on Friday night with Mr Lucas-Smith in attendance. This Mr Lucas-Smith is pretty good—two places at once. You have put the case today—you have said it is one of the most serious cases brought before this house—and you are contradicting yourself. Hopeless!

Those five inventions are your case, and they were all misplaced and provably wrong. You drew the wrong conclusion from the six-second call. You drew the conclusion that there would have been a response call to a message that could not have happened. Your case falls apart, Mr Smyth. On the other hand, there is a simple explanation. Mr Stanhope may have had a non-alarming call from Mr Keady, which was followed within a matter of hours by horrific events, and that call would have been forgotten in the context of what happened beyond that.

Mrs Burke: How do you know?

MR QUINLAN: You might not like it but that is a whole lot more believable than the stack of progressive inventions that Mr Smyth has built a case on. There is no case made here.

I am advised, as we heard earlier, that Mr Stanhope was supposed to be stalking Red Hill at 8.30 on Friday. We have double-checked that and the report is that Mr Castle, Mr Lucas-Smith and Mr Ian Bennett went to Red Hill at about 8.30 on the Friday evening, not Mr Stanhope. Those three. But that doesn't stop you from peddling it in the public domain.

Mrs Burke: That's not what we heard.

Mr Smyth: That is the question.

Mr Stanhope: It's not what you did—

Mr Hargreaves: It's not what you said this morning.

Mr Stanhope: You have got the transcripts, mate?

MR SPEAKER: Order members! Mr Quinlan has the floor.

MR QUINLAN: Mr Smyth's case, Mr Speaker, is not a case and it is demonstrably not a case. I have witnessed in this place, since that bushfire, the other side gradually trying to muster the courage to see how much they can get out of this bushfire. In fact, in the past couple of days Mr Smyth has used the term "crocodile tears". Well, in relation to the bushfire, we have had, and I have no doubt we will continue to have, a stream of crocodile tears from people who are having difficulty in trying to mask their delight and are slavering over the prospect that they might get some political advantage out of this.

This lot, who have been described, not by me but by commentators, as the worst opposition since self-government, has got one, excuse the pun, spark of a chance. But let me say that this case brought today has been built totally on spurious inventions in Mr Smyth's mind.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (4.13): Mr Speaker, I wish to speak only briefly. I just want to mention a couple of things. I think Mr Quinlan has put a case of rebuttal particularly well and there is nothing to be gained by my repeating it.

I want to say a couple of things, though, Mr Speaker. I think I need to make the point that I have been hesitant, on the public record and in this place, about making the case or the defence, or going into detail around the defences that might be made, because of the coronial inquest. I have a very serious concern about the extent to which behaviour in the media particularly, the behaviour of the opposition in this place, the behaviour of the opposition driven through the media, really has impacted on and affected the coronial inquest.

The coronial inquest is going on. It is going on at a great rate and at a great pace. It is actually examining hundreds, if not thousands, of pages of information—examining, I think, somewhere between 150 to 200 witnesses. It has not yet completed that task. It is important that there be procedural fairness. It is important that all the facts be known before the conclusions that have been already drawn by the opposition are drawn and made.

Mr Quinlan made the point about all those false assumptions and, really, the dangerous and defamatory speculation that results from some of the conclusions that have been drawn that are patently wrong—such as the outrageous, false and defamatory stories of just today in relation to Red Hill. I was not on Red Hill on the Friday night before the fire, and we have heard today the defamation of me, the lies and the falsity around that. The implications of that, not just for me but for the coronial process, are quite extreme. It is an indication of the extent to which this witch-hunt that has cumulated in the motion against me today has led to lie upon lie and the creation of fiction in the pursuit of me politically outside the context of the coronial inquest.

I think it needs to be said that this is nothing but a political witch-hunt for my scalp. Be honest about it. You have not even debated the issue that purports to underline your

motion, namely, the fact that I did mislead this Assembly, and I stood up here upon acknowledging that I had misled the Assembly and corrected the record. That is what the want of confidence motion was meant to be about. But you could not resist the temptation to hold me personally responsible for the fire.

This is not about my misleading the Assembly: this is about your determination to actually achieve that one spark of hope that Mr Quinlan referred to, namely, that you can, in some way, create an impression within the community that the fire was all my fault; that it is all down to me; that I should have stood there as some colossus and stopped it; and the fact that I did not is something that I need to bear for the rest of my life.

It is all about, "Jon Stanhope, you are responsible for the fire. It's all your fault. It's all your fault and nobody else's." That is what this is about. This has got nothing to do with the integrity of this parliament. It has got nothing to do with the processes of this Assembly. It has got nothing to do with the fact that I inadvertently misled the Assembly. That is what the motion purports to be about. But that is not what you are interested in. You are interested in grasping like drowning men and women that one glimmer of hope that you think you might have in actually perhaps improving on your vote at the last election. That is what it is all about. We all know that and the community knows that.

I stand with an easy conscience in relation to my role and my performance in relation to the disastrous fires of 2003. My conscience is easy. I fulfilled my duty and obligations to the highest level and I stand easy. You can do and say and lie and defame as you will, and as you will no doubt continue to do, between now and the election, and good luck to you. If that is the way you want to go, go down that way.

But this motion today has not been sustained. What I have done is absolutely consistent with the ministerial code of conduct and it is absolutely consistent with my responsibilities as a minister under the Westminster conventions in relation to ministerial responsibility.

No case has been made. Because the case has not been made at any level, and nor could it be, I indicate that the government will not be supporting the amendment. This case has not been made at any level. Even at the level that Ms Dundas would seek to pitch it, the case has not been made. This is not a circumstance in which you could say, "Well, yes, the case hasn't been made but you need to carry some burden. We need to send you out of here with some flea in your ear as a salutary message to everybody." In effect, it is a matter of saying, "The finding is not guilty but we need to set an example of some sort and you'll do." That simply is no way to deal with an issue of this significance. The case has not been made, the government cannot support the amendment and, of course, we will not be supporting the motion.

MRS CROSS (4.19): Mr Speaker, on Ms Dundas's amendment: I will reluctantly support this watered-down accountability measure, if that is what we can call it. Of course I disagree with the comments made by a member earlier that this is only about a single forgotten phone call. That is a red herring. To simplify this matter in this way is disappointing and, frankly, an insult to the intelligence of many members in this place.

Given that we have now had two versions of who may or may not have been where, it is not up to us now to make the decision. I put my argument forward this morning and I have heard what Mr Quinlan has said and what Mr Stanhope has said. Maybe it is now up to the coroner to recall both Mr Stanhope and Mr Castle and ask them directly and have the coroner make that decision as to what happened and who was where on the night of the 17th.

I am not interested in the Chief Minister's scalp. As I said this morning, I do not think he is a bad person—and I stick to that comment. I am, however, interested in absolute ministerial responsibility. In the Chief Minister's words when he was in opposition: ministerial accountability is absolute. I believe that: either it is or it isn't. The buck stops with the top. The top in this place is the Chief Minister and if, on this matter, which has been the most serious, the most devastating event of Canberra's history in our lifetime, we cannot expect good leadership from our Chief Minister, then why should we impose the same standards on other members of this place on lesser matters which have been brought forward in this Assembly in the last few months?

I put my case forward this morning. I stress: I am not interested in the Chief Minister's scalp; I never have been. I have no problem with this government maintaining its position in government. I would not support the change at this stage. This was not what this is about. This is about accountability and the boss; the buck stops with the top and in this case it is the Chief Minister. If we cannot expect him to accept responsibility for failed actions on his part or reactions proactively then why should we expect it of others? So as I said, I will support this reluctantly because it is better than nothing.

MR SMYTH (Leader of the Opposition) (4.22): Mr Speaker, I rise to speak to the amendment. We moved this motion today with all seriousness because misleading is a very serious event. I certainly do not like the notion of downgrading it, but I can read the numbers. We will support the amendment but do not particularly like having to do so, simply because we do not want to go down in a blaze of glory, standing to the guns, so that the Chief Minister can go outside and say, "I have been exonerated by the Assembly." I think, the opposition and all of the crossbenchers having raised concerns, it is not something that I would want or agree to, but Ms Dundas obviously has the numbers or, in the negative, we do not have the numbers to maintain the motion at the level we would like to see it.

I just bring to members' attention and put on the record that what we have done now is really lower the bar. We have really lowered the bar in relation to the standards of ministerial responsibility. We have lowered it so far that some of the forms of parliament established by Westminster over hundreds of years and maintained by the other jurisdictions in this country have disintegrated in the course of this Assembly. A minister found guilty of contempt would normally resign—but here, no punishment given. Ministers who mislead, even inadvertently, on major issues would normally resign—but here, didn't do it; no; we're not going to do it. It is interesting and I think it is somewhat sad.

Some interesting speeches have suddenly emerged from the government and it is interesting that Mr Quinlan picks on five of the things I have said and does not pick up the other five—the ten incidences of misleading that we propose are here—and I would

not mind addressing a few of those. It is curious that the Chief Minister at 4.15 stands up and says, "I was not at Red Hill."

Mr Quinlan: On a point of order, Mr Speaker: is this summing up on the motion or is this still talking to the amendment? If so I think he should confine himself to the amendment.

MR SPEAKER: No, speaking to the amendment. Mr Quinlan, you are quite correct to raise the issue, but it is a motion of no confidence. The Chief Minister, of course, spoke in relation to the amendment and I guess the same point of order could have been raised in relation to his contribution to the debate, but it was not. Mr Smyth, you have the chance to wind up as well.

MR SMYTH: I will wind up as well, Mr Speaker.

MR SPEAKER: It might be better if you stuck to the amendment because you are going to have another go in due course.

MR SMYTH: Well, both Mr Quinlan and Mr Stanhope spoke after the amendment was moved. I assumed they were speaking to the amendment, and I am addressing things they said in the debate about the amendment.

MR SPEAKER: I think that's probably fair enough.

MR SMYTH: So in regard to Red Hill: it is interesting that I put it to this place sometime before 11 o'clock. Yes, I was on the radio this morning. Radio 2CC rang and said, "Were you aware of what Mr Cornwell said?" I said, "Yes. We had the story relayed to us by constituents some time before." We said, "This is just something that's out there in the ether that somebody else had put to us." We cannot prove it. I cannot prove it. Mrs Cross has a different version of it, from a constituent. We put it to the Chief Minister before 11 o'clock this morning and he spoke directly after me and could have laid that rumour, as it appears now, to rest.

The people who have informed us, Mrs Cross and a radio station will either have to put up or shut up, but it is right in the context of this—

Mr Corbell: The same with you—or pay up.

MR SMYTH: Well, go back and check *Hansard*. It is right in the context of this debate to raise things that were raised with us as matters of grave concern.

Mr Quinlan got up and said, "I rang Mr Stanhope's mobile phone. It takes six seconds to get his message. Therefore you are wrong. He could not have left a message." Well, that is interesting. My office has rung Telstra and Telstra says that if there is no message left then there would be no time record. So the six seconds that appears on Mr Stanhope's bill is after the little beep goes. "Please leave your message after the beep. Beep." That is the six seconds, Mr Quinlan. So the six seconds, therefore, is that of the message or the time to be left or Mike Castle hanging there for six seconds listening—six seconds of silence.

This is what Mr Castle does: he is a busy man. Six seconds of silence: "I am going to listen to the Chief Minister's phone for six seconds." Perhaps, Mr Quinlan, you should get your facts straight before you come in here and say something that is just wrong. Yes, I like the blush. The blush is good on you; it suits you.

Mr Stanhope said that we have come in here and asserted that he is personally responsible for the fire; that he is some colossus who had the ability to stop it. We have not said that. I do not think anybody in this place, on this side or on the crossbench, said that he is personally responsible for the fire. What we have been querying is the misleading. The impression I get is that the people of Canberra do not want blame; they want someone to take responsibility; and they want to know why they were not warned. They have got complaints about personal responsibility for the fire.

I have actually read the paper. That said the fire was started by a lightning strike. So unless Jon Stanhope is the lightning-maker, or Jon Stanhope is a colossus lightning god that he could have started the fire, Mr Speaker—because we all know that that day from Young in south-eastern New South Wales through to Walhalla in Victoria there were about 120 to 140 lightning strikes—or Jon Stanhope's lightning god was very busy, he did not start the fire. I have read the paper, and the paper said lightning strike. I have never seen Jon riding around on a cloud. It is a fairly reasonable assumption he is not the lightning god.

We have been careful about the coronial inquiry, but if you read your *House of Representatives Practice* you will see that coronial inquiries occupy an interesting place in the sub judice recommendations. It is below a court; and assemblies, houses of parliament, still do have precedent. We all need to be careful. But we have not talked about the cause of death, we have not talked about the cause of ignition, and that is not in dispute. The coroner has already given her first report on the cause of death and we await the rest of it. So let's put aside that smokescreen from the Chief Minister, because that is all it is.

This is the smokescreen. Let's go to what Mr Quinlan said. The first thing was: "I've called; I've called the boss's phone." Well, I actually did not have the time, otherwise I might have tested that because we thought about that. But the reality is the six seconds occurs after the message finishes. There was a call for six seconds. You cannot refute the record.

The return call is supposition because the Chief Minister has a memory index loss, so it is selective. Memory index loss apparently is a selective condition now that allows you to remember some things and not other things. So we have got this sort of changeable condition that mutates to fit what you have said. That is what a memory index loss is. It is a moveable condition.

As for the Keady call: the defence on the Keady call, according to Mr Quinlan, is that Mr Keady spoke to the *Canberra Times* and what he told the *Canberra Times* he told them at—

Mr Quinlan: Mr Castle. Get it straight.

MR SMYTH: I am sorry. All right. Well, let's go to Mr Castle then.

MR SPEAKER: Order! Mr Smyth has the floor.

MR SMYTH: Well, I will jump to the phone call, Mr Speaker. We will go to the Castle call. Let's compare the information that is in the *Canberra Times* with what could possibly have been told to the Chief Minister the next morning. The headline is "Bushfires break through". No alarm. "Bushfires break through". "Do not be alarmed; it is okay because nobody told me." But that is the information. The headline is "Bushfires break through".

It is interesting, though, when you read the minutes, because the minutes have a list of projections that were not given to the *Canberra Times*. Perhaps somebody opposite could jump to the defence of the ESB and say, "They told the *Canberra Times* to tell the people of Canberra that." I want to quote from the minutes of the 6 o'clock meeting. Let's quote what is there. It says:

> Current areas of concern include:
>
> a potential run from McIntyres Fire impacting on Weston Creek to Greenway and potentially west and south Belconnen resulting from a more westerly wind;
>
> a potential run from Tidbinbilla impacting on the Bullen Range and southern parts of Tuggeranong;

I looked through this *Canberra Times* article and I do not see any of those words. It is interesting that it says potential. You have got to give them credit; it does say potential. But when you go to the McLeod report, at page 38, talking about phase 2—17 and 18 January, Friday, Saturday—it says:

> The planning section of the Services Management Team developed detailed predictions of the fire spread—

the government had detailed predictions of the fire spread—

> reflecting the progress and impact of the fire; one individual informed the inquiry—

the McLeod inquiry—

> that the predictions were accurate to within a few hours.

Information, available on Friday night for briefing to the *Canberra Times*, was not given, but we are all wrong about this being urgent; apparently we are all wrong. I must live in a parallel universe to the Treasurer.

The third one was the Keady call. Mr Keady is between meetings at this stage. There was an 8 o'clock meeting; there was a 9.30 meeting. But at the 9.30 meeting it was decided to do two things: to set up three evacuation centres that had been identified—Lanyon High School, Hawker College and Phillip College; and they had pet enclosures. Why did they

pick places that had pet enclosures? It was not to evacuate people from farms because, I suspect, in the main they would have left the animals on the farms. They had pet enclosures because they were going to evacuate people from suburbs so that they could bring their pets—at 9.30. And, of course, we have got the Red Cross on standby.

So at the 9.30 meeting, Barbara Baikie outlined the community recovery strategy that had the Red Cross on standby for the national registration and inquiry system. Tim Keady is in this meeting or has just left this meeting at 10.09. It started at 9.30. This fairly detailed list goes on. I suspect the meeting went for some time; I do not think they would have knocked it off too quickly. But Tim Keady does not mention any of this. Keady himself said in his evidence to the coroner that he told the Chief Minister on Monday night of last week that they would have been about serious issues; they would not have been about trivial issues. The serious issues are recorded in the minutes.

Apparently fabrication No 4 is about the cabinet meeting. Ted said, "I did not say panic." Mr Quinlan attributes to us that we have said everybody was panicking. I do not think I have used the word "panic". I would have to check, but nobody gave the impression that the cabinet panicked. But what we have got are the words written down by the record-takers. "Forty to 60 per cent chance of a state of emergency." Okay? And then we get to the state of emergency excuse. Initially they said, "The first we'd heard about the state of emergency was 2 to 2.30 on Saturday the 18th." But when it was revealed—which is misleading, because it was said in this place, Mr Speaker—that they had actually discussed states of emergency in the cabinet meeting, the extraordinary cabinet meeting of the 16th, "It wasn't about fires, it was about power lines. We were going to have a blackout—a big blackout."

Canberra has got four 330,000-kv cables that supply it. There are the Yass to Canberra line, the Tumut to Canberra line, the Talbingo to Canberra line and the South Coast to Canberra line. Two of those lines were at risk. All right. The fear, as proposed by the government, was: we were going to have an 80 per cent blackout. All four powerlines come into the substation at Holt or Macgregor, depending on which street you live in and how you view the thing. Right? For there to be an 80 per cent blackout in the ACT the substation had to go. I can assure you, if that substation is burning, Holt and Macgregor are burning. So if there was a need for a state of emergency it was because the suburbs of Macgregor and Holt were at least on fire.

The excuse was: there is going to be so much carbon up in the air the power lines are going to be arcing. The power lines were arcing already. On the day of the fires, on 18 January, the lines from Tumut and Talbingo tripped several times but came straight back online. So there was no noticeable interruption to supply. The only way there could have been an 80 per cent power failure in the ACT was if the Macgregor substation was on fire, and for it to be on fire Macgregor and Holt were burning as well. Hence the case is proved. The fire was going to impact the suburbs. So their denial just does not stand.

Now the fifth one Mr Quinlan raised is Red Hill on which, of course, the Chief Minister has spoken to him. It is interesting that the stories that we have received vary. Some people said they saw Peter Lucas-Smith, some people said they had seen Mike Castle. We have now heard from the Chief Minister that those two gentlemen and Mr Bennett were there. People get confused, I assume. The information relayed to us, from two

different sources, has obviously had a little bit of conflict. But that could have been put to rest this morning.

They are the sorts of reasons why we do not like the downgrading of this motion. But I want the Chief Minister to understand that he is on notice, that he has been found wanting by this place, that we have grave concern about his behaviour, and we will all watch how the coronial inquiries unfold and I am sure that we will all take on board information that is brought to us by constituents out there who will often inform members of parliament as to their views of what is going on.

MR SPEAKER: Before you speak, Mr Cornwell: I was lenient with the Chief Minister and with the Leader of the Opposition in relation to speaking to the amendment, but I am not going to be with you. So if you want to speak to the matter I want you to confine your remarks to Ms Dundas's amendment.

MR CORNWELL (4.37): Thanks, Mr Speaker. I reluctantly support Ms Dundas's amendment. I do so because first of all I think that the original motion should be progressed. But, secondly, in relation to the amendment moved by Ms Dundas: it still does not seek explanations for numbers of matters that have been raised. The problem I have, therefore, is that there is nothing here to call for the Chief Minister to explain some of the matters that have been canvassed previously.

I am particularly interested in the Red Hill problem. I find it interesting that Mrs Cross and I—and I understand there is a third person known to a radio station—three separate people have made allegations about your being there, Chief Minister. You have said that you were not there. This statement was made at approximately 4.10 this afternoon. I really do not know why it was not denied earlier. That is the question I have. It seems a simple matter. If you were not there, then you were not there. These people however have come forward in good faith—

MR SPEAKER: Come back to the amendment, please, Mr Cornwell.

MR CORNWELL: Yes, Mr Speaker. I am saying that there is no request within the amendment for an explanation of what was happening that has held your coming back here until 10 past 4 this afternoon to explain why this was not refuted earlier. I understand that you were aware of the comments this morning because you were contacted, your office was contacted, for a response to the suggestion that I passed on that you had been seen on Red Hill. I understood that your office was contacted this morning about it, but I frankly would have expected you to have referred to it in your opening address today, which you did not. I find that rather difficult to comprehend. I think that, therefore, it does require a little more explanation. I also think that an explanation is called for as to why your party threatened to sue the radio station if I was interviewed this afternoon by them in relation to this Red Hill matter. Again, I do not know your reasons for it.

Mr Stanhope: It is called defamation.

MR CORNWELL: Well, you had the opportunity to respond, Chief Minister.

Mr Hargreaves: What part of "respond" do not you understand? It is defamation.

MR SPEAKER: Order! Mr Cornwell has the floor.

MR CORNWELL: I have no evidence. Within this motion there is no opportunity for this to be canvassed by the Assembly itself. The Chief Minister may like to speak individually on the matter, but there is nothing within this motion to call for him to do so. I have listened carefully to his comments that involved the fact that there is a coronial inquiry going on, but I think my colleague Mr Smyth has already answered that question, that what we are debating in here is not necessarily impacting upon that.

As I say, I understand Mr Quinlan indicated that there were three officers up there on Red Hill and, again, I have no reason to argue with that point, but I would like to have some sort of explanation—and I cannot get it out of this motion—as to why you delayed so long in coming forward on this when at least three different people, in good faith, certainly, indicated that you were there. Perhaps they have to go to the coroner now if they feel strongly about it. But I would not at all wish to impute that they are making this up, and it may be that further explanations are required; we are not getting it out of this amendment.

MR PRATT (4.43): I rise to speak to Ms Dundas's amendment to amend the motion. I will reluctantly support Ms Dundas's amendment. Why? Because I have not heard any argument from the other side at all today to refute a single one of the issues that we have raised.

The Chief Minister has failed in his ministerial responsibility, both on the day of the 18th and in the time since the 18th, in getting to grips with what actually went wrong and being open with the community about that. I have not heard any argument from the other side that would indicate to me that those concerns raised are to be refuted, so I still hold the view that the Chief Minister deserves to lose his job.

So it is with some reluctance that I do so, on the basis that I think that it is at least important and, therefore, Ms Dundas's amendment is a useful vehicle and a right and proper vehicle to ensure that at least some action is taken against the Chief Minister for the failures that we have seen: the failure to inquire as a leader, the failure to scrutinise, during and after the events, the evidence; the failure to listen to expert opinion. He has allowed himself to be dudded, not listening to expert opinion, and has consequently failed the community.

As a result of the litany of those failures, he has been led to a position where he has misled this place and the community. For that reason, the Chief Minister deserves to have action taken against him. It is against that fundamental requirement that I will support Ms Dundas's amendment.

MR STEFANIAK (4.45): Firstly just in relation to the point of the Red Hill lookout: I would certainly hope perhaps and think that the Coroners Court may well like to hear from, it seems, three individuals and indeed maybe recall the other individuals named in relation to the matter—

MR SPEAKER: Mr Stefaniak, come to the matter that is before us, that is Ms Dundas's amendment.

MR STEFANIAK: Thank you, Mr Speaker. I think it is unfortunate that today, after a very lengthy debate, we end up with a watered-down recommendation expressing grave concern. But to put that in context, I suppose, grave concern is something like someone being charged before a court with murder for driving a truck at someone and running them down and killing them—a deliberate act—and then that charge being watered down not even to manslaughter, which would be the next lower charge on the agenda, but culpable drive causing death. It is a bit akin to that. But I suppose if, at the end of the day, that is all that is likely to come out of this particular process, that is probably better than a straight acquittal. Yes, the opposition, with reluctance, as has been said by every other speaker, will be supporting that motion.

I do, however, remind members, especially newer members in this place, that motions of no confidence are not taken lightly. I think everyone in this place—virtually everyone who has been a member of this place—is fundamentally a decent person, but they are human; they get things wrong; they have responsibilities; and, on occasions, they very much do the wrong thing. We have standards. We have standards in society; we have standards we expect. In the criminal law there are standards; in the civil law there are standards. Sometimes the standards might seem to people outside to be rather strangely applied.

In the case of this Assembly, for example, my colleague Mrs Dunne lost her job on a committee because of a pamphlet she put out, inadvertently, which she apologised for. But she has suffered a significant penalty there; she is no longer a committee chair. She suffers a loss and a drop in pay.

There is no actual real penalty for "grave concern" expressed in a censure, apart from its being somewhat embarrassing to the recipient, and I would urge members, especially the newer ones and especially the crossbenchers—not Mrs Cross who, I think, made an excellent speech before lunch and has gone through this in great detail and again has reiterated that this afternoon; but perhaps Ms Dundas and Ms Tucker, although it might be water off a duck's back there, Mr Speaker—to have a look at the history of this place and to have a look at what has gone on before when members and indeed chief ministers have been found guilty of some form of misconduct and have had motions of no confidence actually upheld against them and also perhaps have a look at some of the other matters in relation to censures and the like. It is the gravest matter that can be brought forward.

There has been ample evidence today to indicate, despite the rather ingenious defence by Mr Quinlan, that the Chief Minister is certainly guilty of misleading the Assembly and, as has been said earlier, the normal, accepted practice for that is in fact for a motion of no confidence to get up. Ministers have gone for less. I hark back again to the case of Minister Brown in the federal parliament. So it is a bit sad that the matter has been watered down, because of the gravity of it, and I just wish to make those points for the benefit of members.

MRS BURKE (4.49): I think we need to remind ourselves again that we are here today because the Chief Minister brought this matter on. Let us look closely at Ms Dundas's amendment. It seeks to substitute these words:

> "misled the Legislative Assembly on the question of advice—

that is one point I would make—

> given to him and contact made with him—

that is another issue—

> during the period 17-18 January 2003 regarding the 2003 bushfires, this Assembly expresses grave concern ...

We really need to look at this. Reluctantly, I will be supporting this. What else are we to do in this place? We made a stand and said that the Chief Minister should be and must be held accountable. He is the chief law-maker of the ACT and for him to abrogate responsibility should not and cannot be allowed. Mrs Cross spelt it out quite well. I think we should try telling this once more—in this amendment—with feeling to the people of Weston Creek, Kambah and the rural areas. Ms Tucker read out from what Richard Arthur of the Phoenix Association said about people grappling to get their lives together. I will read a bit more:

> As they think "What if …?", they will again wonder why they were not warned. Not to know the answer will make them feel hurt and frustrated. To think that there is someone who knows the answer, but will not disclose it, will deepen the hurt, and turn that frustration into anger.
>
> Understanding why something dreadful has happened to them gives a person the best chance of accepting their fate and getting on with their lives.
>
> It is not right that people who have already been hurt so much should have to deal with these additional, unnecessary, emotions for the rest of their lives.
>
> The lack of explanation has caused, and will continue to cause, much unnecessary grief. It is a major obstacle in the path of the recovery process.

This must be very embarrassing for those opposite and perhaps for some of the crossbenchers, because all I see here in this amendment is a brave attempt to duck-shove one of the most major events that we have had face us in this Assembly. The real issue is: whom should we be holding accountable for misleading the Assembly then, if not Mr Stanhope? Who should we, Mr Stanhope? Perhaps you have got an idea. Again, I refer to my colleague Mrs Dunne being dragged, rightfully so—and she admitted that—over the coals about a flyer. We are talking here about deaths and destruction, misleading of the Assembly over advice given and people that you met.

I know that you do not like it and I know that you are getting embarrassed; I know that. Mr Speaker, they are getting very embarrassed, very touchy over there, but this has to be dealt with.

Mr Corbell: That is an outrageous statement. Say it outside the chamber.

MRS BURKE: And you can call it what you want, Mr Corbell. One cannot be half

guilty or half pregnant. The Chief Minister has either misled the Assembly—and you said you had, Chief Minister—or he has not.

Mr Stanhope: Well, oppose the amendment.

MRS BURKE: I am talking to the watered-down amendment. Through you, Mr Speaker, I address my comments. I am not comfortable with the amendment to our motion.

Mr Stanhope: Well, oppose it.

MRS BURKE: No. I will tell you why, Chief Minister and Mr Speaker, I will not be opposing the motion.

MR SPEAKER: Order, members. It's been going pretty well so far.

MRS BURKE: I will accept it very reluctantly. The Chief Minister openly admits that he misled the Assembly. Indeed, it is not the first time, Mr Speaker. He has misled the Assembly on numerous occasions in relation to the bushfires.

To now downgrade this motion to grave concern waters down the severity of the issue. At the risk of the Chief Minister simply walking out of here on a technicality, of being able to say, "You see, I have been cleared of any wrongdoing"—and that is what you would like, isn't it Chief Minister?—I will be supporting, extremely reluctantly, the amendment by Ms Dundas.

The grave concern I will have, from here on in, is as to whether we have severely lowered the credibility of this place and the role of politicians in the ACT which, it is already seen, Mr Stanhope, has been very low anyway. Members need to remember that this debate is about the position, not the person. So again, Mrs Cross—and I think you are an amenable fellow, Mr Stanhope—this is about position. You know it, and you can sit there arrogantly and blustering away as you do, but it is about the position, not the person, and the conduct of such a person in that position.

Indeed, I was interested to note—and I will probably sit down after this. Mr Stanhope, I was intrigued, why did you mention conspiracy so much?

MR HARGREAVES (4.55): I will be fairly brief. I have sat here for probably 95 per cent or maybe more of this debate and I have seen such an awful lot of smoke and mirrors, contemptible fabrication and straw man building from that side that I feel quite ill. The motion before the Assembly today talks about a phone call and the Chief Minister's recollection of it. It does not talk about the bushfire scene; it does not talk about the matters before the coroner.

The lot over there have done nothing but put the Chief Minister on trial for the whole management of the bushfire process. That is what they have done. An examination of *Hansard* will reveal that. You can yell nonsense until you are blue in the face but it is true. The lily-livered crowd over there mount this big thing saying, "Oh well, we've got to hang the Chief Minister because he's misled this place." They have gone to water.

They have said, "We'll do a count. We're going to lose this, so we'll go with Ms Dundas." Ms Dundas one; Liberal Party nil.

They do not have the courage of their convictions to stick with the content of their motion. They have not got the guts to go with their original motion. No, they will go with Ms Dundas's watered down version. The Chief Minister does not have a case to answer on either count. He does not have a case to answer on any count. He has none.

Let us go back. What is Mr Stanhope being accused of in this motion?

Mr Pratt: Misleading.

MR HARGREAVES: Mr Pratt says that he is being accused of misleading. Mr Pratt, welcome to the real world. You were here when the Chief Minister stood up and said so. Good on you. The Chief Minister said, "I have done this and I apologise profusely." He gave all the details at the time—on the very day it occurred. As soon as he was able to get to this chamber he came forward and gave us the information. He could have shredded the stuff and tried to wing it. But he did not. He came in here and said so.

What they are really saying is that they want to run a no-confidence motion on the Chief Minister because he could not recall a phone call of 16 months ago or perhaps—as Ms Dundas is trying to say—because he did not refer to the records. He did not say, "Oh dear, perhaps there was something in my phone records I might have forgotten. I'd better go and check them all." That is what he is on trial for today. This is what these people want to try the Chief Minister for today.

It is an appalling state of affairs that you want to move a motion of no confidence against the Chief Minister for doing that. I ask those members opposite: when was the last time you checked your phone records for the mobile phone in your possession? I bet it has not been checked in donkey's ages. It has not been checked, because they do not routinely get—

Mr Pratt: I pay the bill every month.

MR HARGREAVES: Good on you, Mr Pratt. Go to the top of the class. Do not take your books though son, because you will not be there long enough. This is an appalling waste of our time. We have wasted the entire day. Mrs Dunne sits there and says, "If you've got the courage to stand up and defend the Chief Minister, do so." I will defend the Chief Minister any day and anywhere. He has no case to answer here—absolutely none.

This is an appalling piece of work. And the lily-livered crowd over there have just folded like a deck of cards. Because they cannot walk out of here with their dignity intact, they have to support the watered-down version that Ms Dundas has put forward. I could not support either of them because the Chief Minister has no case to answer.

Mr Smyth: We'll check your records. We'll get them to check your records.

MR HARGREAVES: You can check as much as you like, Mr Smyth. You do not scare me at all, so go ahead and keep trying because it will not work. Mr Quinlan demolished

the Leader of the Opposition. He revealed the contemptuous piece of fabrication for what it was. So what happens? You can always tell when we touch a nerve because not only does the volume go up but also the pitch: when they are upset they sound like the Vienna Boys' Choir.

MR SPEAKER: Order members! Mr Hargreaves, direct your comments through the Speaker.

MR HARGREAVES: Thank you very much, Mr Speaker; I am having a great time. The issue now at heart—because these guys have folded—is whether this Assembly wishes to express grave concern over the fact that the Chief Minister could not remember something that happened 16 months ago.

Mr Smyth: No; that he has repeatedly misled—

MR HARGREAVES: I do beg your pardon: he forgot to check his phone records of 16 months ago. The fact is that when you have a memory lapse you usually need a flag to kick it off. Sixteen months is neither here nor there. Without a flag it could have been three months; six months or 12 months. When the flag went up the Chief Minister had the records checked. As soon as the flag went up the records were checked. As soon as the problem was revealed he went straight to the chamber and did it.

Instead of moving motions expressing grave concern—like the lily-livered bunch over there; they want to have a no-confidence motion—we should be saying, "Yes, there's the bar. The Chief Minister's recognised the bar and he's come in here and he stepped over it. Thank you very much for that." We should be saying, "Thanks for that example." This Chief Minister has done something that your lot could not do.

A point was recently made about the sin. What was Mr Stanhope's sin? It was a sin of omission; not commission. He did not deliberately forget the content of that phone call. He did not deliberately take out an overnight loan.

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

MR HARGREAVES: The Chief Minister did not deliberately take out an overnight loan illegally. He did not deliberately go away and blame his public servants for hospital implosions or for over-expenditure at Bruce Stadium. We are talking about the Chief Minister's culpability, if you wish, relative to Ms Dundas's amendment. Did the Chief Minister deliberately try to give away cheap land at Kinlyside to one of his mates? No. Did he deliberately try to fool the people of the ACT about V8 car races? No. It is a matter of omission.

Mrs Dunne: I rise on a point of order, Mr Speaker. It relates to relevance. Mr Hargreaves is rabbiting on about issues not pertinent to the debate or to the amendment. He would like to deflect the debate from the issues. Hall/Kinlyside is not relevant to this debate.

MR SPEAKER: Come to the amendment, Mr Hargreaves.

MR HARGREAVES: I was addressing the amendment. We are talking about whether there should have been any amendment and a motion such as this. The Chief Minister has come into this chamber and advised everybody that he did not do something. We are now holding him up and saying, "You're a ratbag because you didn't do something and you should have done it."

If this place starts moving motions expressing grave concern about things that people came in here and admitted to, then we are in dire straights. The bar is low. These people here have dropped the bar; they have dropped the bar too low. It is so low even the Leader of the Opposition could step over it—and that is a low bar.

This is denigrating for this Assembly. You guys denigrate it professionally. You are professionals at denigrating this place. Sometimes you amaze me. I would never support a no-confidence motion in the Chief Minister in any event, but I cannot support the dropping of it down to this.

The Chief Minister has come into this place and told us about it. If he had not done this, none of us would have been any the wiser. Instead of saying, "You ratbag" we ought to be saying, "Thanks for that information". What have you done about it? Have I heard that once? No; I cannot support this. I cannot support the no-confidence motion and I cannot support the amendment.

MRS DUNNE (5.04): I, like the rest of my colleagues, am reluctant to support this amendment but will be doing so, but not with as much reluctance as government members have in supporting their Chief Minister.

MR SPEAKER: I think you have already spoken to the question.

MRS DUNNE: I have not spoken to the amendment, Mr Speaker.

MR SPEAKER: I will just check our records.

MRS DUNNE: No; I have spoken once only.

MR SPEAKER: Yes; you spoke after Ms Dundas and you were seen to be speaking to both the motion and the amendment. You will need leave to speak.

MRS DUNNE: I seek leave to speak again.

MR SPEAKER: Leave is granted, Mrs Dunne.

MRS DUNNE: I reluctantly support this amendment, but not with the same reluctance as members of the government have in supporting their Chief Minister today. I am reluctant to do it simply because of the words used by Ms Dundas herself. She said that what the Chief Minister did, as the acting minister for emergency services, was inexcusable. They were her words. But Ms Dundas then sadly created an excuse. The doctrine and the standard insisted upon by Mrs Cross—that ministerial responsibility is absolute—is what we should be applying here.

It is important for the culture that I spoke about before that we send a message that behaviour such as, "I forgot. The dog ate my homework," and all of this sort of thing cannot be allowed to go unpunished. There must be some punishment. Yes, it is with reluctance and, yes, it is because we can count that we will be supporting this plea bargaining. This is nothing more—it is plea bargaining. Sometimes plea bargaining is a pretty nasty thing in the courts and it is a pretty nasty thing here today.

MS TUCKER (5.07): I seek leave to speak to the amendment.

Leave granted.

MS TUCKER: I did speak briefly to the amendment in my initial presentation. But I am a little concerned about how this amendment to the motion is being interpreted by various speakers. For the record, I make it quite clear that my supporting this expression of grave concern is related to the question of why there was not earlier checking of phone records by the Chief Minister when these issues kept being raised by everyone concerned. That is quite a different issue from Mrs Dunne's assertion that it is plea bargaining or Mr Hargreaves's concern that it is a watering-down of the motion.

There are two issues here. I support this motion because it is regrettable that there was misleading, and that greater diligence and reasonable efforts were not made, as is described in *Senate Practice*, to ensure that there was no misleading. That is what I am gravely concerned about. I have accepted that Jon Stanhope forgot the phone call. I totally reject the assertions from the Liberal opposition that he intentionally misled—in other words lied. I do not accept that. But I do accept this amendment because it is concerning that greater effort was not made to check the records.

MS DUNDAS (5.08): I seek leave to speak to my amendment again.

Leave granted.

MS DUNDAS: I briefly respond to some points that have been made in the debate on this amendment. I would like members to look at the amendment. It states that we would pass a motion that would read:

> That, since the Chief Minister has misled the Assembly on the question of advice given to him and contact made with him during the period 17 to 18 January regarding the bushfires, this Assembly expresses its grave concern at the conduct of the Chief Minister...

It is specific to the question of advice; it is specific to the question of the Chief Minister misleading this Assembly. He admitted that, and I am glad that he brought that to our attention. But I do not think that that means that he should walk away without some form of reprimand.

Some members have made the point that this form of motion sets a dangerous precedent. I would like to draw the attention of members to some other motions against ministers that have been moved in this Assembly.

Mr Smyth talked about when he himself once misled the Assembly. I have not checked *Hansard* on this, but I understand that that was part of a no-confidence debate that Mr Smyth walked away from. The fact that he misled the Assembly was not grave enough for this Assembly to show no confidence in him as a minister.

I draw the attention of members to the motion of no confidence that was moved against Minister Corbell when he misled the Estimates Committee. He went through a privileges inquiry. In the end, this Assembly recorded a motion of grave concern on that. That was at a time when Minister Corbell came down, admitted that he had done something wrong and apologised for it. The Assembly put on record our concern about that. That is what I want to do today: put on the record our concern that we have been misled.

As I have said before, I cannot support a motion of no confidence. New evidence is being put to the coroner today. New evidence will be put to the coroner tomorrow—all of which is incredibly relevant. But the case is still ongoing. At this stage we cannot prejudge. If we again focus on the misleading and the question of those phone calls, then it is important that we hold him to account for that misleading.

I address the points made by Mr Hargreaves. The Chief Minister did not do something and he should have. That is why we are concerned. That is not a reason to dismiss this. It is not a reason to say that the Chief Minister has no case to answer. He did not do something and he should have. That is the heart of my concern.

That is at the heart of the reason why I have moved this amendment. From what members have said, I understand that they support the idea that the Chief Minister not walk away from this without some kind of reprimand. That is what we will achieve at the end of today.

Question put:

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

The Assembly voted—

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

Question so resolved in the affirmative.

MR SMYTH (Leader of the Opposition) (5.15): It is interesting that Mr Hargreaves's memory is so deficient. I refer him to 30 June 1999 when a motion of no confidence moved by Mr Stanhope was downgraded. *Hansard* lists Mr Hargreaves as being in the ayes when Mr Speaker asks whether the "motion as amended be agreed to". So perhaps

he should go back and look at the practice of voting for amended motions, including no-confidence motions. It is interesting that his memory is so short.

In the debate Mr Quinlan said that this was just politics; that it was all about trying to improve political advantage. We are all politicians—you can read it any way you want—but the reality is that if it were just politics we would not wait 16 months to move this motion. If we followed the formula of the previous opposition led by the now Chief Minister, by this stage we would have moved two or three no-confidence motions, just for politics' sake. And we have not done that. That needs to be on the record.

The reason is that we have waited for promises of the Chief Minister to be fulfilled. We waited for the McCleod Inquiry to leave no stone unturned. We waited for an answer to a question that I put to the Chief Minister—

Mr Quinlan: So it's not about a phone call? Is that what you're saying?

MR SPEAKER: Order, Mr Quinlan.

MR SMYTH: He said that all my questions would be answered when he appeared in the coronial inquiry, and they were not. Last Tuesday we had confirmation that this place had been misled. It is rightly so—when misleading has occurred and it has been brought to the attention of the House—that the House make a decision as to whether it proceeds to give some voice as to how it feels about being misled.

What are we to make of a chief minister who cannot remember basic facts, events and conversations essential to his ministerial duty? Some conversations we do forget. We might easily forget the time somebody asks us, "How are you today?" But people generally remember conversations starting with "I love you", "I'm leaving you", "I'm pregnant" or "The city's about to catch fire".

Given that he spoke with Mr Keady and Mr Keady had come from a meeting discussing the evacuation of homes and the preparation for Lifeline scripts to be used on phone counselling and with Canberra Connect, how can we seriously believe his story?

I remember all too well what happened to me on that day. My day started at midnight, just like Mr Corbell's did. He was at the northern end of the fire; I was at the southern end. The pair of us progressed through that night. We were relieved early in the morning to go home and get some sleep and to come back out again. I can remember the phone calls that I made that night; I can remember the phone calls I made that afternoon and the phone going off to say, "Come back to the shed; we need you now." I can remember family and friends ringing to say, "What's happening? We can't get any information. It doesn't make sense."

The Chief Minister did not strike matches in the 2003 bushfires; he did not start the fires. But neither did he rise to the duties expected of him in a time of public emergency. We could say his failing is that he merely watched and fiddled while Canberra burned. But the truth is that he was barely watching and he did not do so much as fiddle. On that day he failed in his duty as Chief Minister and as acting emergency services minister in several respects. According to his account, he presided over a culture of poor communication between himself and his officials, who failed to inform him about

pressing issues to the high standard required of a minister. He failed, so he tells us, to seek briefings or communicate with his officials during his brief time as the acting minister.

He failed to return phone calls on the most important day in the history of that particular ministerial job. And he failed in his public role as a leader and as a communicator in a time of crisis. Since that time, it appears that he has left public servants in the unfair position of needing to lose their own memories—not to mention diaries and notes—to avoid contradicting their minister. This degradation of the public service deserves more scrutiny than it has had to date.

Today Mr Stanhope has relied on his memory loss as a complete defence to explain what happened. He has created another new political concept in his attempt to explain away misleading the ACT Assembly—a claim that he had lost his unindexed memories. But it is a loss of unindexed memories that is apparently selective. His unindexed memories plea lets him cast away key information and therefore escape accountability to the Assembly. He says he was traumatised. But was he really so traumatised?

We know that he has basked in the positive media coverage of his involvement in the helicopter incident. He can recite his actions that day whenever he wants to repeat them to the media. We are already searching for meeting notes, the diaries and the phone records—and now we need to search also for Jon Stanhope's memory index. Why is it that only Jon Stanhope has lost his memory index when many other Canberrans are able to give their recollections to the coroner? Is it quite simply all too convenient? While we are debating this, the public can only become more and more disappointed with the low standard to which politicians will stoop.

Jon Stanhope will go down in history for this. He has given politicians around the world a whole new way of avoiding scrutiny. In fact, this new concept has enormous potential to undermine the whole system of the parliamentary control of governments. From now on politicians will just claim, "I've lost my memory index." It could become a complete immunity not just against important votes of no confidence but also to help ministers avoid ever having to be held to account through regular parliamentary questioning.

I commit the Liberal Party to rejecting the technique, which will seriously corrupt accountability to this Assembly. I urge the crossbench MLAs to weigh this up very seriously. They must not align themselves with this development. This defence seems particularly crafted to impress Ms Tucker, who is on the record as suggesting to the media that she might let Mr Stanhope off on the grounds of trauma induced memory loss. Mr Stanhope is repeating back to Ms Tucker what he expects will most likely impress her.

The Chief Minister's speech has totally sidestepped the need for ministers to be accountable and honest. He has shown no recognition of the vital principle that parliament must not be misled. In the past ministers have accepted that they need to resign when it is revealed that they have misled parliament. There is no such recognition by Jon Stanhope of such centuries of parliamentary tradition in which parliaments protected their authority very strictly by demanding real and effective accountability.

The rule about not misleading parliament is not there just to catch dishonest ministers; it exists to ensure that parliament can make its decisions on the basis of the truth. If Mr Stanhope or any of his ministers cannot provide us with the truth for any reason, they cannot stay on as ministers.

We are here today for the simple reason that Mr Stanhope has acted to conceal his failings as the acting emergency services minister in his failure to receive and to return phone calls. He has acted over 16 months to defend a politician's reputation at the expense of the need for closure of many thousands of Canberrans. Indeed, he has sought to create and then use a very false account of his 24 hours as acting minister as an actual political tool against members of this Assembly. He has repeatedly boasted that he could leverage the events of that disastrous day to strive for majority government, wiping out the opposition and crossbench members, and removing all prospect of their scrutiny either on this issue or on any other.

It has been put that we have made no case. Mr Quinlan got up and attempted, in his standard way, to list five things that we had "got wrong"—in his words. But what they did not do was address the core of the misleading—the serious misleading, the serial misleading—of this place: that phone calls were received or not received was always denied; that phone calls were not made was denied; that the state of emergency declaration was limited to Saturday, until it was revealed that it was discussed on the Thursday; that McLeod would uncover everything—and yet it did not; that cabinet was never briefed, or it never thought it was serious, or was never told of the threat to the city—

Mr Hargreaves: It's not in the motion.

MR SMYTH: Yes, this was all discussed.

Mr Hargreaves: It's not in the motion.

MR SMYTH: We have been misled. Read the motion. I continue: that the state of emergency was—when it was revealed that the state of emergency had been discussed earlier—then about a blackout; that Phillip Chaney did not tell anyone in the government, when he did; and that no-one contacted me for two days. That is the list of the misleading that this Chief Minister has carried out. They are the things that we take him to task on today.

He has misled us; he has misled the public; and he has shown us that he plans to profit from his misleading in ways that are entirely political and entirely disreputable. We should have set a much higher standard today. The motion of no confidence deserves to be passed. We will pass what has been amended. Once again I urge MLAs not to align themselves with Jon Stanhope in the lowering of our standards of government for this city.

Question put:

> That the motion, as amended, be agreed to.

The Assembly voted—

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

Question so resolved in the affirmative.

Motion, as amended, agreed to.

Petitions

The following petitions were lodged for presentation.

Lake Ginninderra

*By **Mrs Cross**, from 25 residents:*

> TO THE SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
>
> The petition of certain Residents of the AUSTRALIAN CAPITAL TERRITORY draws to the attention of the ASSEMBLY that there is a URGENT NEED to OPPOSE the development application 20032016, Block: 80, Section 65 Emu Bank, Belconnen which is located on the foreshores of Lake Ginninderra.
>
> Your petitioners therefore request the Assembly to call on the MINISTER FOR PLANNING to reject this application as this development will bring residential dwellings within 9 meters of Lake Ginninderra and will cause a number of planning, environmental and other local problems, which is contrary, to good planning for the foreshores of Lake Ginninderra and its environment.

Belconnen land auction

*By **Mrs Cross**, from 17 residents:*

> TO THE SPEAKER AND THE MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
>
> The petition of certain Owners and Residents of the Australian Capital Territory draws to the attention of the Assembly that the ACT Planning and land Authority had admitted that they mislead prospective buyers at a Public Land Auction No. 20032016 Street Address: 114 Emu Bank. ACTPLA have admitted that they had made such an error in their correspondence dated 22nd April 2004. This serious mistake has denied the government and the people of the ACT the full financial, and usage, benefit to the community on this parcel of land.

> Your petitioners therefore request that the Assembly to call on the Minister for Planning Mr Simon Corbell MLA to immediately have a full inquiry into the circumstances which allowed this erroneous situation to occur, or that the Assembly itself hold a PUBLIC inquiry through one of its own Committees on this serious issue.

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

Legal Affairs—Standing Committee
Scrutiny Report 48

MR STEFANIAK (5.29): I present the following report:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 48, dated 12 May 2004, together with the relevant minutes of proceedings.

I seek leave to make a brief statement on the report.

Leave granted.

MR STEFANIAK: Scrutiny report 48 contains the committee's comments on 28 pieces of subordinate legislation and one government response. The report was circulated to members out of session. I will add a response—I do not know whether this is in it—to the report, which I received about an hour ago from Mr Corbell. I think that can be—

MR SPEAKER: I think you need to seek leave to table it.

MR STEFANIAK: I seek leave to have that incorporated into the report, Mr Speaker. I think that is very handy for members. I thank the minister for the prompt response.

MR SPEAKER: It would be better for you to seek leave to table it.

MR STEFANIAK: I seek leave to table it.

MR SPEAKER: In due course you will have to get the committee to agree to have it incorporated in the report.

Leave granted.

MR STEFANIAK: I table the following paper:

> Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 48—Government response in relation to Subordinate Law SL2004-12, dated 13 May 2004.

Subordinate Law LS2004-12
Motion for disallowance

MR HARGREAVES (5.30): Pursuant to notice, I move:

> That Subordinate Law 2004-12, Land (Planning and Environment) Amendment Regulations 2004 (No 1), be disallowed.

Mine is a mechanical role in this process. In my view the people of Gungahlin have been detrimentally treated by a group of people who will use every ruse to prevent any extension at all to the Gungahlin Drive. People of the ACT voted for the western route of the GDE. The Liberal Party arranged, with their non-elected mates in the NCA, to force the GDE to the eastern route, closer to the area known as O'Connor Ridge. The lobby group there opposed to the road supported the preferred western route but are now using every loophole available to them to prevent the construction of the road.

These regulations address the issues raised by Justice Crispin. They permit the majority will to prevail over the guardians of the no-road-at-all position. The legal battles are costing the Territory more than $25,000 a day; they continue the frustration of Gungahlin residents and will in the end achieve nothing. My motion is intended to bring to a close the uncertainties of the role of the territory and the NCA with regard to the GDE. I hope the conclusion of the debate today will result in commonsense being brought to the issue.

MR CORBELL (Minister for Health and Minister for Planning) (5.32): As my colleague Mr Wood indicated on 4 May this year when he tabled the Land (Planning and Environment) Amendment Regulations 2004 (No 1), the government is committed to building the Gungahlin Drive extension and believes the project must proceed as soon as possible.

The government has taken the unusual step of moving a disallowance motion on its own regulations to bring forward this debate to minimise the potential for further delay to the project. The government has taken this step because we believe the majority of the members of this place wish to see the Gungahlin Drive extension proceed as quickly as possible and that they will support the government in opposing this motion. This will remove the further potential source of delay to the project and reduce the exposure of the ACT community to further unnecessary costs.

Members will be aware that Gungahlin Drive, in its various names, has been in the planning pipeline for around 40 years. The original proposal contained in the NCDC's 1965 strategic plan for the future of Canberra was for the road to run across O'Connor Ridge and down the eastern side of Black Mountain and to cross Lake Burley Griffin at Black Mountain Peninsula. This understandably controversial proposed alignment was replaced with one very similar to the current proposed alignment to the 1970 NCDC strategy document *Tomorrow's Canberra*.

Of course, more active consideration of the road commenced some 20 years ago with the decision to proceed with the development of Gungahlin itself. The concept of a parkway style road running approximately along the proposed alignment was confirmed in the NCDC's 1984 metropolitan policy plan and again through the extensive investigations carried out as part of the Gungahlin External Study, or GETS as it was know, in the late 1980s.

The current alignment was introduced into the territory plan through variation number 138 in 2001 under the previous government. As members would be aware, this government has always been committed to building a road, but had a preference for an alignment to the west of the Australian Institute of Sport. We invested considerable time, energy and money to demonstrate that the western alignment was the most appropriate and suitable one for this important piece of public infrastructure.

However, given the stance taken by the Australian Sports Commission and the National Capital Authority on this issue, we now know that the western alignment is not an option. Nonetheless, that does not remove from the government its commitment to building this road or the obligation it believes it has to ensure that this piece of infrastructure is developed to service the growing town centre of Gungahlin.

These amending regulations under the Land (Planning and Environment) Act 1991 clarify the law as it was understood to apply before the recent Supreme Court decision of Justice Crispin on 31 March 2004. These changes provide certainty by clearly identifying the responsibilities of the territory and the National Capital Authority for works in designated areas and clarify the intent of the minister's decision-making powers.

The amendments to the regulations clear the way for work on the road to proceed once the work is approved, without the possibility of delays associated with reviews by third parties and objectors. I have to clarify that the government is not removing rights that previously existed; the government is instead clarifying the operation of a law prior to the Crispin judgment.

Members know—and members should know—that all governments in this place have worked on the basis that the development of major arterial roads on unleased land is not subject to public notification and third party review. This was never challenged for any other road project until this one. The government is not removing rights but simply clarifying the existing operation, as it has always been understood by successive governments and assemblies in the territory.

The government adopts and acknowledges the comments of the Standing Committee on Legal Affairs contained within the scrutiny report just tabled by Mr Stefaniak, particularly given the subject matter of this subordinate law, that is to say, town planning.

In its comments, the committee directed our attention to the High Court decision in HA Bachrach Pty Ltd v State of Queensland. In that decision, the court held that, in dealing with land and planning matters, the Queensland state legislature was not acting beyond power or interfering in any relevant sense with the exercise of judicial power. We now bring a consistent approach in relation to these regulations.

Given the nature of this project and its significance to the territory, it is appropriate for this Assembly to have a major role in the decision-making process. I therefore urge members to join with the government so as to allow these regulations to have full effect to permit the Gungahlin Drive extension project to proceed as soon as possible.

MRS DUNNE (5.38): The opposition will be opposing this disallowance. It is a slightly unusual procedure but it is important to put on the record and send a very strong message to the community and to the courts that this Assembly strongly supports the building of this road.

While I support the disallowance, I have to paraphrase the words of a comedian, "It's a fine mess you got us into here, Ollie." All of these things—the whole process of the Gungahlin Drive extension approval and the unedifying protests near the AIS—have been brought about because the government did not do its homework. They did not get it right the first time.

The government knew that this would be contentious. One of the things that has evolved through the many briefings that I have had on this over the past two or three weeks is that they knew, long before the approvals were made, that the opponents of the road were investigating and testing areas that they might be able to use to hold this up. They were making enquiries, or snooping around the government and the bureaucracy, to find and test the weaknesses. And knowing this, the government did not take the appropriate approach.

We are doubly blessed with hindsight. We should have gone down the road of enabling legislation from the outset. Today the opposition is presenting legislation that would, among other things, implement enabling legislation for the Gungahlin Drive. It is neat and clean; it is really a very elegant piece of legislation. The government should have thought of it a lot earlier. With all the resources at its disposal, the government should have been a bit smarter about this. We should not have had the guerrilla warfare in the courts and on the ground near the AIS that we had.

We the opposition want to put it very clearly on the record, as the government does, that we support the building of this road. We believe that it should go through as soon as possible. That is why we are not supporting this disallowance. Having been briefed and having had extensive discussions, I understand the motivation behind them.

I am still concerned that there are things that have been put into these regulations that do not relate precisely to the GDE and that they have used an opportunity to tinker at the margins with the application of the Land Act in areas that do not precisely relate to the GDE. I am discomfited by that, but not sufficiently discomfited to oppose the making of these regulations. I support the making of these regulations and therefore will not be supporting the disallowance.

MS DUNDAS (5.41): The ACT Democrats will be supporting this motion to disallow the regulations. This piece of subordinate legislation rolls together two different types of changes into one piece of legislation. The first change is a response to the recent judgment of Justice Crispin that some developments may require ACTPLA development approval to proceed even if they are on designated land. The second issue that is included in these regulations is a change that prevents appeals to development approvals for the Gungahlin Drive extension. It is a pity that the government has decided to combine these two issues because they are deserving of separate consideration.

The Democrats have some time for the first objective of these regulations, which is to clarify the relationship between the Commonwealth and the territory for approvals on designated land. This deserves some comment, although we will also focus on the second objective of preventing planning appeals for the GDE.

The relationship between ACTPLA and the National Capital Authority remains sub-optimal. The NCA continues to have control over planning decisions that arguably should be the province of local decision makers. The government's decision to junk its election promise not to build the Gungahlin Drive on the eastern route was linked to the inappropriate decision-making powers of the National Capital Authority. Current disagreement about the appropriateness of developments in other areas is also centred on the powers of the NCA. I note that the federal opposition has recently proposed a realignment of planning responsibilities in favour of the territory should the federal government change to the ALP at the next election.

In this context, it is not without irony that the ACT Minister for Planning is moving to confirm the NCA's powers despite disagreeing with their extent. However, despite the fact that there seems to be a general move to greater self-determination for the territory in the area of planning, it is important to stress that this is best achieved in the political arena and not judicially.

While Justice Crispin's decision raised the idea that the territory may, in fact, have greater planning jurisdiction under current laws than first thought, this is still a subject of some contention. It is also the case that, if the ACT took this ruling to mean that it could exercise greater planning control over designated areas, the resulting confusion and transfer of responsibility could not only cause chaos for existing developments but also mean that the Commonwealth could legislate to reinstate the agreed previous understanding.

The amendments to confirm the status quo between the territory and the Commonwealth appear to be a pragmatic approach in principle to provide certainty to the planning arrangements in the territory. However, this is not to say that the Democrats agree with the status quo. We believe that there needs to be a serious re-evaluation of the relative roles and relationship of the NCA and ACTPLA.

If this were the only issue that we were focusing on with these regulations, then the Democrats would see no need to disallow these regulations. However, the government has rolled a second, more disturbing set of amendments into the legislation. These regulations make changes to prevent objectors or third parties from making appeals to the Administrative Appeals Tribunal under sections 275 and 276 of the Land (Planning and Environment) Act 1991. This is a further erosion of the rights of Canberrans and sets a poor precedent for the conduct of future governments.

There will be those who will try to portray this disallowance motion today as a simple black and white vote about supporting or opposing the construction of Gungahlin Drive extension. However, those people know that that argument is superficial and simplistic. There are wider principles at stake today in this debate—principles about separation of powers between the judiciary and the executive and the principle of equality of the law for all Canberrans, whether they are the government or some other developer. These are

the real issues that the government's legislation presents and these are the issues that should be the real subject of this debate. It is irrelevant whether or not we support the Gungahlin Drive extension or where we believe the Gungahlin Drive extension should be built. This debate is not about whether to build a road; it is about how governments should undertake development and the role of the judiciary in government developments.

For those who need reminding, Western liberal democracies subscribe to a fundamental belief that there should be a separation between those who enforce laws and those who interpret the law. In this case, we are presented with a government who wishes to build a road. However, in our system of government it is the legitimate role of the courts to determine whether the government has complied with the law in doing so. This also means that, in order for the court to fulfil this, the people of Canberra should have reasonable access to the courts in order for them to make that judgment.

The proposed change to legislation breaks this principle. This change will mean that the executive will be the only judge as to whether the law has been complied with. This is an inappropriate removal of the role of the judiciary and reduces the rights of the people of Canberra. Once again we see that this government, the Stanhope Labor government, who professes to protect the rights of people of the ACT, actively taking those rights away.

The second issue is that this sets a precedent for governments to avoid the scrutiny of the courts by way of regulation. There are existing call-in powers available to the minister that already achieve this end. I will restate the Democrats' opposition to those call-in powers, which also have the effect of removing scrutiny by the judiciary. However, at the very least the current arrangements for the use of call-in power must undergo consultation with the Planning and Land Council and the results must be tabled in the Assembly.

This requirement has been sidestepped by the piece of legislation before us, opening up a new door for governments to call-in developments without going through the established processes. The fact that the call-in powers already exist begs the question of why this legislation is necessary in the first place as there is already a mechanism to achieve the government's desired outcome. The same issue is raised by the fact that this effectively introduces a new mechanism by which a government can avoid the scrutiny of the courts. However, why should this only be used where the government is the developer? Why should other developers not have the right to avoid the same scrutiny by a change to the planning regulations? This change opens a Pandora's box whereby suddenly governments have the ability to remove the scrutiny of the courts at a whim. The Assembly should rightly refuse this interference to help ensure that it does not occur in the future.

These regulations offend against Westminster ideas of the separation of powers, are unnecessary and sidestep existing planning requirements—in fact, they go above and beyond what the government is trying to achieve. These regulations create one law for the government and another for everyone else. Regardless of the arguments about whether the Gungahlin Drive extension is a bad policy decision, these regulations are, without a doubt, bad law. The ACT Democrats will be supporting the motion to disallow them.

MS TUCKER (5.49): This is a strange debate in that the mover of the disallowance motion will clearly not be supporting his own motion. That is because his motion goes against his party's position. This is another attempt to circumvent scrutiny of the decisions that have allowed work on the Gungahlin Drive extension to commence. In itself that is enough of a basis to reject these regulations.

These regulations include changes that have far-reaching consequences. It is inconvenient for the government that democracy takes time. It seems to have been a mistake for the government to have written contracts that included a large penalty if there were delays. It should have been obvious that this was a controversial piece of work, bulldozing through the nature reserve as it does and committing Gungahlin residents to a future of more transport problems as this expensive road shifts the congestion points to different points on the road network. I am also aware that Save the Ridge alerted the government and the tendering contractors to the fact that opposition to the construction work could be expected. In the briefing from the government, my office was told that the government extensively conducted risk analysis for the contract. Clearly this risk was missed.

There seems to be a bit of a sense from the Minister for Planning that this scrutiny is somehow vexatious and that, for citizens to raise concerns and point out where there were flaws in the decision-making, mandated under the laws that protect our nature reserves, is somehow unjust and unreasonable. This seems to me to be taking far too lightly the system of checks and balances in a democracy. We have appeal rights to the AAT so that there is an opportunity to check on the adequacy of a decision made by the administration and we have appeal rights to the ADJR so that the lawfulness of a decision can be tested. These are not to be thrown away because there is an inconvenient decision.

There are echoes of this in what I hear from parts of the community sector—that is, they have to weigh carefully any public criticism of the government for fear of losing their funding or not getting desperately needed new funding. I have heard that of the previous government and, despite early assurances that the government welcomed the free and independent comment of the community sector, I am sadly hearing it now about this government.

I am pleased to note that the changes to the regulations will not apply to development applications made before the commencement of these amendments. I had thought that it would be a fairly small matter for the government, having changed the rules, to withdraw its application made under the old rules and reapply under the new regulations which have been in force since Friday, 30 April. However, the view expressed in yesterday's briefing was that it would be difficult under the new regulations to make a new application since ACTPLA would be obliged to refer an application for works on designated areas to the NCA for approval. I have to admit that I do not quite understand the problem there. The government will need to apply to the court to have the injunction lifted in any case.

The first substantive change is to add to the list of absolute exemptions from the act, part 6, in regulation 40. Exemption from part 6 represents exemption from any requirement to seek development approval. The new regulation before us today

specifically exempts development in a designated area and, in particular "(a) the construction, alteration or demolition of a public road in a designated area; or (b) any works in a designated area related to the construction, alteration or demolition of a public road; or (c) any other development in a designated area that requires approval under the Commonwealth Act, section 12 (Works in Designated Areas to be subject to Plan and approval by the Authority)." This addresses the finding by Justice Crispin in the Supreme Court. Justice Crispin's scrutiny of the law was an opportunity for, at the very least, a conversation to be had about ACT control over areas in the ACT, but instead the same government, who want to limit the designated areas to the parliamentary triangle and claim back planning control to the territory, have quickly created a regulation to hand back responsibility for decisions in this area.

Do we not want to have a say in developments in the territory? Do we really trust the NCA to do the right thing? Is it not the NCA who gave the big go-ahead to developments at the airport that we all complained were undermining the development of Gungahlin and other areas of the ACT? It seems to me that this has been a lost opportunity, despite the complaints that have come over the years about the current planning arrangements and two planning authorities. Instead of taking this opportunity from Crispin's finding to actually work to find a more workable solution, we see what the government has done.

I turn now to the amendment removing regulation 41 (3). This regulation limited the exemption to the notification requirement conferred by 41 (1) and 41 (2). Regulation 42 is re-titled from "Exclusion of appeals by applicants—Act, s 275" to "Exclusion of appeals—general". Section 275 of the act provides for appeal to the AAT for some of the decisions made under the act. By this amendment, the GDE is specifically exempt from scrutiny in the AAT, joining appeal by applicants on decisions related to a development in relation to unleased territory land, one which is to be decided by the minister under the act, section 229B (6) (c)—that is, a call-in development, a variation of a lease to increase the area of land comprised in the lease or a development on unleased territory land.

So to the prevention of appeals by applicants, we are adding the prevention of appeals by anyone in relation to this one specific development—a development in which the details of licences and so on have been questioned because the extension runs through a nature reserve. The amendment to regulation 43 is to exclude appeals by objectors and third parties in relation to the construction of the Gungahlin Drive extension. The government is saying in these amendments that it believes that it should not have to answer for its decisions on specific approvals and specific work on the GDE.

Our system of governance relies on separate arms, judiciary, executive and parliament and on scrutiny and oversight to ensure that decisions made on behalf of the executive by the public service can be scrutinised for the adequacy of a decision in the independent forum—the judiciary. Without that scrutiny, we are at risk of dictatorship. Although the AAT process and the court challenges in general will not last forever, they may just have raised some useful information that has been missed. So far the AAT, looking at the quality of the decisions made, has set aside the approvals of vegetation clearing and suspended the operation of licences to kill native animals and take protected plants. If there are problems with the process or with the content of these decisions, then that is exactly what this system of scrutiny is designed to pick up.

The scrutiny of bills report raises the question of rights in relation to—to paraphrase—sidestepping the right of appeal by rewriting the rules. I note that there is, unfortunately, an inaccuracy in the report. At the end of the second paragraph in relation to clause 6, there is a statement that says, "The rights issue is raised by the fact that this new rule would apply in the determination of any appeal taken from the decision of Crispin J". I think that is a misinterpretation of clause 4 of the regulation. Clause 4 specifies, "The new set of regulations do not apply to any applications for development that were lodged before the commencement of the new regulations". As I understand it, this means that an appeal to the Crispin judgment would be determined under the old regulations. It does, however, mean that, should the government find a way to withdraw the original application, it will circumvent that scrutiny.

I would like to point out two rights issues raised by the scrutiny report—firstly, the removal of the rights to appeal and, secondly, the effect of this change to the rules when cases are under way. I will read one section from the scrutiny report. Hopefully members have read it. We obviously have not seen a government response at this point, except a letter, which I have just seen. One point we make in the report that I think is interesting is as follows:

> the effect might be to diminish public confidence in the appeal courts, given that they will be perceived to be associated with the change in the rules. (It is the effect of the law on how the courts are perceived that is critical: Nicholas at 220 [110], per McHugh J.) The result is that the law makes it more difficult to maintain public confidence in the administration of justice by the courts …
>
> An independent line of argument might be founded on the fact that the law is aimed at the particular litigation concerning the O'Connor Ridge. This may not in form be the appearance of the effect of clause 6, but in substance this is its effect (as the Explanatory Statement acknowledges); and see *Nicholas* at 260ff per Kirby J. Some judges take legislative judgment aimed at particular people is an indication that the law interferes in the curial process … Justice Gaudron has taken the view that laws that are specific and not general in their operation may be invalid because they require or authorise the court "to proceed in a manner that does not ensure equality before the law …

We also make the point:

> Whether the Act constitutes an impermissible interference with judicial process, or offends against Ch III of the Constitution, does not depend upon the motives or intentions of the Minister or individual members of the legislature. The effect of the legislation is to be considered in context, and the plaintiff is entitled to point to the litigious background for such assistance as may be gained from it. However, it is the operation and effect of the law which defines its constitutional character, and the determination thereof requires identification of the nature of the rights, duties, powers and privileges which the statute changes, regulates or abolishes.

It goes on. I realise I cannot read the whole thing. *(Extension of time granted.)*

I note with some concern too that, if the debate had gone ahead as requested by Mr Hargreaves last week, there would have been no time for this scrutiny. As it is, there was time for a special meeting of the committee to consider this regulation but the

government response has not been circulated, as I said, with any real time for us to assess it. As most members are aware, the Scrutiny of Bills Committee relies to a great extent on the expert advice of its part time legal adviser. However, the government response is pretty light on. If this is the letter, it boils down to the minister saying that there was no intention to interfere with judicial power.

The Conservation Council of the South East Region and Canberra (Inc) has written to all members today about these regulations and other measures to try to avoid scrutiny through other environment laws. The letter states:

> Dear MLA
>
> We would also like to draw your attention to the ALP's party policy which states a commitment to open and accountable planning including retaining third party appeal rights for residents. The policy states: "Labor believes third party appeals are a necessary part of the planning system. Individuals immediately affected by a planning proposal will have the right to have a development application reviewed if they believe it is contrary to Labor's Suburb Master Plans or relevant provisions of the ACT Code for Residential Development …
>
> Third party appeals rights are an important part of good governance. The Conservation Council supports third party rights as a key part of good environment and planning legislation. Third party rights provisions under existing ACT planning and environment legislation are already inadequate. Proposals to grant exemptions to override these limited rights set an extremely worrying precedent.
>
> The term third party appeals provides the right of individuals to challenge particular decisions made under legislation. It also provides scope for individuals to address activities that may be taking place in breach of law. …
>
> Third party appeals processes—where in place—have not opened a floodgate of litigation and their existence and occasional use have value in ensuring compliance with environmental laws and in testing environmental best practice. Such provisions need to allow open standing, the issue of costs not be a prohibitive barrier and consideration of the public interest benefits.
>
> Additionally this accords with the view of the Australian Law Reform Commission that standing be open to any person with a court having discretion to limit the action and that criteria be developed to guide issues re the costs of legal action. The High Court Oshlack is another case which highlights some key directions in public interest litigation. …
>
> Interestingly, the prior to the recent changes the Land Act Regulations referred to section 229(7)(a)—

That is a more technical comment, which I do not think I will read. In excluding this work from scrutiny, the government is saying that it is absolutely above scrutiny, that all its decisions on this work do not need the assurance of possible checks by the judiciary. By agreeing to these regulations, the Assembly is saying that it agrees with the government. If there are gaps in the information, it is surely essential that this information be brought to bear on the work. Even if you assume that the road is going ahead, there is still great value in making sure that the works plans are intended, I understand, to ensure that the construction of the road is done as sensitively as possible.

If there are gaps in the information, they should be filled. The government may say, as was said in the briefing yesterday, that Dr Joe Baker has said the studies were accurate. In fact, my understanding, based on the communication from Dr Baker, is that he did not agree with the media's summary of his views. He was looking into the question of the adequacy of the environmental assessment for the GDE at the request of members of the community and communicated to them as follows:

> The report of ABC radio of April 22 was particularly inaccurate.
>
> I had told the ABC person, who telephoned me that there was no public report and I would not be commenting on it. He did ask me if I had any general impressions, but I said there was nothing for public comment. In discussion, I did say that the work done by Environment ACT was quite extensive, and the term "Preliminary Assessment" was, in my opinion, misleading, because the Environment ACT people, and their consultant or consultants, had done a lot of work. …
>
> He asked me "was it as good as an EIS or EIA"? I said "no, but it is on the way to one"
>
> Everyone is entitled to their interpretation of statements, but my concern is that the ABC report is not responsible. …
>
> I retain the belief that great benefit would come from an open meeting, with independent Chairperson, and agreed agenda, to identify what has already been done to understand the impacts of the proposed GDE and what needs to be done, to allow a comprehensive assessment of the environmental impact of any such extension, both now and in the future.

(Further extension of time granted.) I am certainly prepared to facilitate such a meeting with Dr Baker, with interested people from the community, such as scientists who have expressed concern, and with the government. I think that this is a constructive suggestion from Dr Baker. I am happy to work with him on that. The construction of this road is going to progress and I have already expressed concerns about the process. Surely this government will acknowledge that it would be constructive and respectful of community and scientific concerns to look at how we can ensure that harm is minimised to the absolute degree. I hope that at least we can get that much done. We will be supporting this disallowance.

MR HARGREAVES (6.06): I would like to correct something I said earlier in my speech. I talked about the cost of not proceeding with the road at approximately $25,000 a day instead of $25,000 a week. I would not like anybody to think that I would mislead the place such as, for example, telling people that telephone calls start from the minute the beep sounds. It would be a dreadful misleading of the House if that were so. I found the arguments of the Minister for Planning persuasive and convincing.

Question put:

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

The Assembly voted—

Ayes 2	Noes 15	
Ms Dundas	Mr Berry	Ms MacDonald
Ms Tucker	Mrs Burke	Mr Pratt
	Mr Corbell	Mr Quinlan
	Mr Cornwell	Mr Smyth
	Mrs Cross	Mr Stanhope
	Mrs Dunne	Mr Stefaniak
	Ms Gallagher	Mr Wood
	Mr Hargreaves	

Question so resolved in the negative.

Papers

Mr Speaker presented the following papers:

> Letter to the Speaker from an absolute majority of Members, dated 5 May 2004, requesting that the Assembly not meet on Wednesday, 12 May 2004 and fixing Friday, 14 May 2004 as a day of sitting.
>
> Notice convening special meetings of the Fifth Legislative Assembly on Thursday, 13 May and Friday, 14 May 2004, dated 6 May 2004.

Assembly—sitting time

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

> That 10.30 am be fixed as the hour of sitting for the meeting of the Assembly to be held on Friday 14 May 2004.

Appropriation Bill 2004-2005
Alteration to resolution of the Assembly

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

> That the resolution of the Assembly of 4 May 2004 which fixed 3 p.m. on Thursday, 6 May 2004 for the resumption of debate on the motion that the Appropriation Bill 2004-2005 be agreed to in principle, be amended by omitting "6 May 2004" and substituting "14 May 2004".

Suspension of standing and temporary orders

Motion (by **Mr Wood**), by leave, agreed to, with the concurrence of an absolute majority:

> That so much of the standing orders be suspended as would enable Private Members' business, Notices 1 to 6, Order of the Day No. 8 and Notice 8, in that order, being called on.

Projects of Territorial Significance Bill 2004

Mrs Dunne, pursuant to notice, presented the bill and its explanatory statement.

Title read by Clerk.

MRS DUNNE (6.14): I move:

> That this bill be agreed to in principle.

I have great pleasure in presenting to the Assembly the Projects of Territorial Significance Bill 2004. Only yesterday, in a budget vox pop comment, a lady said that she hoped to see in the budget more nation building projects, more dams, more roads, et cetera. Nation building or territory building projects are important for who we are and what we are. They create employment and wealth and build our community. From time to time we build projects that are for the benefit of the whole community, without which we would be the poorer. I can think of significant projects in the past like the National Library, the building of Scrivener Dam to create Lake Burley Griffin and even more contentious projects like Black Mountain Tower. Large projects are often contentious.

The Canberra Liberals have been thinking about this issue for a long time now. We looked around and saw important projects being held up for a variety of reasons—projects like the Lithgow silicon smelter or the Welcome Reef Dam—and we started to apply our mind to what we could do to ensure that, when something was very important to the territory, it would proceed not in a sort of authoritarian way but in an open and transparent way. While we were talking about this notion and agreeing that the championing of the concept of projects of territorial significance should be part of our election platform, along came the disruption of the Gungahlin Drive extension. I spoke earlier today about the trouble that we have seen over the final building of Gungahlin Drive.

We have a practical application of our notion of projects of territory significance. We saw the Stanhope government getting deeper and deeper into the mire, tied down in legal guerrilla warfare with a handful of activists who have a valid point of view but who do not represent or recognise the needs of the majority. I suppose it is fair to say that the first instinct of the Liberal opposition was to sit back and gloat—the government was building our road on our route and taking the flak for it. It became apparent to us that the Stanhope government in its usual risk-averse way was reluctant to do anything to cut through this legal and confrontational mire. The Canberra Liberals commissioned this bill to meet two needs: to introduce the idea of projects of territorial significance and to create the Gungahlin Drive extension as the first project of territorial significance.

This bill creates the concept of a project of territorial significance. It allows a chief minister to declare a project to be a project of territorial significance and thus streamline the approval procedures. The bill will allow the Chief Minister to declare by regulation that a project is of territorial significance and ensure that such a project, while subject to the normal approval process, would not be subject to any third party appeal for any aspect of the work. The declaration being a regulation would be subject to disallowance

and thus ensure accountability through the Legislative Assembly. The Legislative Assembly would have ultimate control over the process.

The bill as introduced also contains in a schedule a regulation declaring the Gungahlin Drive extension project to be a project of territorial significance. Part 2 of the bill deals with what is a project of territorial significance and how the appeal system changes as a result of the declaration of a project to be of territorial significance. It defines what is a project of territorial significance and outlines the conditions in which the act applies—that is simply that if, in the opinion of the Chief Minister, a project is in accordance with a major policy of the territory government, may have substantial effect on the development of the territory or would provide substantial benefit to the territory, he may make a regulation, along with the executive, declaring the project to be of territorial significance. The regulation is made in accordance with the Legislation Act and, as I have said before, is disallowable.

Projects so declared are exempt from third party appeal. Clause 8 (1) of the bill prevents the operation of section 276 of the Land Act, which relates to the review of decisions, objectors and third party appeals to projects so declared. Clause 8 (2) (a) means that only the applicant can appeal against a conditional approval under section 245 of the Land Act or seek reconsideration of decisions under section 246A of the Land Act. Clause 8 (2) (b) prevents a third party appeal against approvals that are associated with the approval under the Land Act for projects so declared. This means that any approval or licence granted to allow the project to proceed is not subject to third party appeal. In saying this, I need to reinforce that what the opposition proposes in this bill is a clear, open and transparent process where the Assembly basically agrees with the decision of a chief minister that all approvals are current approvals, all approvals have to be done according to the laws of the territory but that those approvals are not subject to appeal.

In response to the decision handed down in the Supreme Court by Justice Higgins, the bill makes it clear that, where part 6 of the Land Act does not apply, land is exempt from the provisions of this legislation. Part 3 creates the power to make regulations in accordance with the Legislation Act and the schedule attached to the bill creates the Gungahlin Drive extension as a project of territorial significance. The bill also contains a transitional provision in relation to the GDE regulation and establishes that the declaration applies to approvals both before and after the commencement of this bill.

This is a simple, straightforward bill that directly addresses the dilemmas sometimes faced by government in progressing important projects for the good of the community when they sometimes face concerted minority opposition. In very selected circumstances this bill proposes to remove third party appeal rights. It does not in any way propose to curtail the approval process.

I need to contrast our approach with the approach of the government over Gungahlin Drive. We have seen in debate last week, and we will see later tonight, the government agonising over the Nature Conservation Act, trying to get it right. It is proposing to make radical changes to the act so that it can get out of its problems over Gungahlin Drive. When the problems with Gungahlin Drive first arose, I said—I was being fairly straightforward and have been criticised by my colleagues for being so straightforward—"Why don't you consider enabling legislation?" A whole lot of officials around the table said, "We can't do that. It would be terrible." A couple of staffers and advisers said, "Oh

no, Mrs Dunne, we couldn't possibly do that. That would be the end of civilisation as we know it." I am glad to see that the government has come to its senses. While we went off to commission this piece of legislation, the government agonised and, I gather, has come up with its own enabling legislation. I have made a number of overtures to the government to brief me on its progress and have been open with the government and given it two advance copies of this bill, but that courtesy has not been reciprocated. It would have helped if we could perhaps have negotiated our way through this—

Mr Wood: We are still working on ours.

MRS DUNNE: Gee, that is an admission! I am glad the government has recognised the fact that some projects are subject to vexatious and frivolous objection and that they should be protected from what I have previously termed "legal guerrilla warfare". This proposal is broader than just the GDE. It provides for the future. It provides that other projects of significance that will have an impact on territorial employment, economy and infrastructure will go ahead. Without binding anyone to this, I would consider that projects such as a jail, major transport infrastructure, a significant employment project and perhaps even the dam would be the sorts of things that could be so declared under this legislation. We are not talking about a bicycle path, a caryard or a nightclub.

We did contemplate a whole lot of measures like building in specific definitions in dollar amounts or the numbers of jobs but we thought that that was too prescriptive. The two advantages I believe that our approach has over that of the government are scope and accountability. This bill addresses not only the narrow planning requirements but also the possibility of challenges under other legislation such as we have seen with the Nature Conservation Act and heritage legislation and a whole range of environmental legislation.

I would like to place on record my thanks to not only the drafters who did a splendid job in a very short time but also members of the community with whom I consulted, who made some suggestions for improvement. I also place on the record that there were some suggestions from the community that we could not accept—for instance, to completely rest the power of making the designation with the Chief Minister and not with the Assembly. The party rejected those suggestions. There have been a number of occasions, including today, when we have had to take it upon ourselves to remind the executive that they are answerable to the Assembly. I do not want to move the ACT further in the direction of executive dictatorship, either for this government or any government in the future.

In summary, this legislation is prompted by two imperatives: firstly, to promote Liberal policy and Liberal belief that some projects are sufficiently important that third party appeals are not necessary and unwarranted and get in the way of the progress of the territory and, secondly, to address the crisis caused by this government over the approvals for Gungahlin Drive extension. I commend the Projects of Territorial Significance Bill 2004 to the Assembly.

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

Sitting suspended from 6.26 to 8 pm.

Water and Sewerage Amendment Bill 2004

Mrs Dunne, pursuant to notice, presented the bill and its explanatory statement.

Title read by Clerk.

MRS DUNNE (8.01): I move:

> That this bill be agreed to in principle.

I am pleased to present the Water and Sewerage Act Amendment Bill 2004. The purpose of this bill is to amend the Water and Sewerage Act 2000 and the Water and Sewerage Regulations 2001 to institute a new system of mandatory water efficiency measures. The aim of the bill is to provide for a number of simple measures that can easily be complied with to ensure that as a community we can reduce our domestic water consumption.

The bill is, in essence, a reprise of and replaces the Building (Water Efficiency) Amendment Bill sponsored by the opposition in 2002. The previous bill amended the Building Act 1972, which has subsequently been repealed. The mechanism to amend the Building Act was not the best vehicle for making water efficiency changes.

At one stage the responsible minister considered making changes to the regulations himself to put water efficiency measures in place, but it is clear from the government's recently published water strategy, or lack of strategy, that the government is not prepared to go down the path of mandating water efficient measures because it would be too much like making a decision. At the end of this debate, I propose to discharge the Building (Water Efficiency) Amendment Bill from the notice paper. Sadly, from opposition the process of changing something like plumbing regulations is slightly cumbersome. The vehicle of this bill is not as elegant as I would have liked, but it does a workman-like job.

Part 2 of the bill amends the Water and Sewerage Act 2000. It inserts a new section 17A, which creates a strict liability offence if a licensee does water supply plumbing work that contravenes the Water and Sewerage Regulations 2001 in relation to a shower, a tap inside a building or a sink. Part 3 of the bill amends the Water and Sewerage Regulations 2001. It inserts a new regulation 16A in the Water and Sewerage Regulations 2001, which requires that, in accordance with section 17A of the act, there are new prescribed requirements for work that involves new plumbing. These requirements are, firstly, that, when installing a new shower, either approved works must include a valve that reduces water flow in the tap for the shower or the showerhead must have at least a AAA efficiency rating under the Australian/New Zealand Standard for showerheads, which is 6400-2003 or whatever water efficiency standard is current; secondly, when installing new indoor taps, the tap must contain a valve that reduces water flow, unless the tap is directly attached to an appliance such as a dishwasher or a washing machine; and, thirdly, when installing a sink, a garbage disposal unit may not be connected.

I want to look at what these provisions do in more detail. They relate specifically to AAA showerheads, flow-reducing valves and insinkerators. According to the government's own Factsheet No 4: Water Efficient Showerheads in *Think Water, Act Water:*

> Inefficient showerheads can use up to 24 litres of water per minute. AAA rated water efficient showerheads (currently the best rating for showerheads) can use as little as 6 litres per minute …
>
> Installing a water efficient showerhead would save an estimated 17 kilolitres of water per year. This means:
>
> reduced water consumption—saving on your water bill and deferring the need for a new dam;

and major public works such as sewers and dams—

> reduced sewer flows …; and
>
> reduced energy consumption costs for hot water—reducing your energy bill and greenhouse emissions.

These are substantial benefits from a simple measure that we, the Liberal opposition, believe should be passed on to the community. This is why this bill will mandate the installation of water efficient showerheads in all new domestic work. The concept of a flow-reducing valve is very simple technically. According to another fact sheet from the government, Factsheet No 6: Taps, Aerators and Flow Regulators:

> **Special valves** and flow regulators restrict the diameter of the water flow path, so that less water can come out through the tap each second.

It is pretty obvious; it is not rocket science. Also:

> Savings of up to 45 per cent of the water flow, and up to 60 per cent of the energy costs when used on hot water taps, have been reported.

In one instance of a trial of this device in a federal government-owned accommodation complex, we saw water savings of 36 per cent and considerable savings on energy to heat hot water that equated to $1,190 per year and saved 4.29 tonnes of carbon dioxide each year. That is equivalent to the emissions from a typical car driving 1,280 kilometres. In this trial, the payback period for installing the device was 0.8 years.

The ACT government conducted its own trial of flow-limiting valves in selected government housing properties. A preliminary field test conducted on 28 public housing properties under the former Liberal government found total water savings over a six-month period amounted to more than 922,000 litres. The average percentage of water saved was 23.9 per cent. There were also significant savings on energy because households needed less hot water.

The Stanhope government was presented with the final report on energy and water savings in June 2003, but since then has sat on the results. Because Brendan Smyth was the responsible minister when the trial was conducted, he used the conventions to obtain these results. The process of obtaining the documentation was like extracting teeth. It took the opposition from September 2003 to January 2004 to obtain a document which was ours by right. I wonder why the government is sitting on these results.

We have other evidence of how well flow-limiting valves work. The 2001-02, Urban Services' annual report revealed that tap valves were successfully trialled in two government-owned buildings. Due to the success, they are now going to be fitted in a third building. If they are good enough for ACT government office blocks, why is the story not being told far and wide? Why is the government not putting these valves in every government-owned building: every school, house, flat and office? Why does the recently introduced water strategy fail to even mention this measure?

I turn now to insinkerators. The ACT government, of both persuasions, has been committed over many years to a no waste by 2010 strategy. But, as I have said on many occasions, it would be hard to see much commitment to that from this government. It has done zip, particularly in regard to putrescible waste—bio-waste—which could be composted or have other applications. I have also said recently that, if we continue down this path under the leadership of this government, we will be hard pressed to meet the no-waste targets by 2050. If we want to get there, we need to make a massive culture change. People need to take responsibility for the waste that they generate.

I have stressed over and over again that we cannot shove putrescible waste into our landfill—out of sight, out of mind. It is irresponsible to shove putrescible waste into landfill, but it is much worse to shove it down the sink, knowing that it will ultimately end up in the river system. We are an inland city and we have a lot of obligations downstream. Insinkerators are a very bad way of managing waste. There are two problems with insinkerators: they are a hopeless way of getting rid of garbage and they are profligate in their use of water.

It has been pointed out to me by experts who were involved in the building of the lower Molonglo water quality control system that it was originally projected to serve a population that was much smaller than Canberra's current population. It was essentially an American system that was brought here and established. On the basis of American or Californian calculations, it was based on much higher water use because most Californian homes at that stage had insinkerators. One of the reasons why the lower Molonglo water quality control system still works and is not overburdened is that, generally speaking, ACT residents do not have insinkerators. Given our water crisis and our need to do something much more sensible with putrescible waste, the Liberal opposition would like to prohibit the future installation of insinkerators.

The Liberal Party generally is reluctant to employ regulation over incentive. We would usually prefer to use financial incentives but we believe that this is too important an issue. There are many issues in relation to water efficiency where we need to create a cultural change; therefore, from time to time we need to lead by example through legislation. At this stage, this bill refers only to new domestic work. It is a start but we need to move on from here and make real commitments to real savings, not the token efforts currently being conducted by the government. In the spirit of making real inroads into water efficiency, I commend the bill to the Assembly.

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

Sentencing Reform Amendment Bill 2004

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

Title read by Clerk.

MR STEFANIAK (8.14): I move:

> That this bill be agreed to in principle.

At the outset, I refer members to *Hansard* of 2 April 2003, starting at page 1,200. Fundamentally, the Sentencing Reform Amendment Bill 2004 is a regurgitation of the Sentencing Reform Amendment Bill 2003. That bill was dismissed, I think. It did not get up in November, the last calendar year. In the next calendar year it is being brought back. This bill does, however, have a number of additions.

I will very briefly recap the four fundamental points of the bill. Firstly, the bill increases, in a significant number of offences under the Crimes Act, the maximum penalty available to a court to bring these offences into line with New South Wales. In some instances our offences are very similar to or exactly the same as those of New South Wales. In other instances, New South Wales may have four or five different offences where we have one, so an extrapolation has been done. I referred to that last year when I introduced the bill on 2 April 2003. Secondly, the bill introduces sentencing guidelines. Thirdly, the bill also introduces the New South Wales concept, which has been in now for a little while, of suggested non-parole periods for very serious offences. There is one difference from the bill I brought in last year—that is, the suggested non-parole period for repeat offenders in relation to burglary offences has dropped from two years to 12 months. I will say something about that shortly. Finally, the bill removes a number of impediments to proper sentencing. There is a four-pronged approach.

I have made a couple of fairly important additions. This bill has been changed from last year's bill simply because we have a criminal code which has affected a number of offences. So the language has been changed and necessary amendments have been made by the drafters to keep it in line with where we are up to in the criminal code.

Sentencing is always a vexed problem. I have said quite a bit about this in the past—members can read what I said on 2 April—which I will not regurgitate. It is interesting that since then we have had a number of opinions expressed in the community. The bill had its genesis as a result of a lot of community consultation. I made reference to a very hardworking group last year.

On 28 September last year, the *Canberra Times* published an interesting poll which indicated that 83 per cent of Canberrans thought our courts were too lenient when it came to serious violent offences such as armed robbery, particularly nasty assaults and murders, 12 per cent thought that they probably were too lenient and only five per cent thought they were doing it correctly. I think it is important that we reflect the views of the community in this legislature and that the courts do what the community expects of them. It is a hard job. There are experienced men and women on the bench who are paid well to do the job and we expect them to do it.

Another interesting report which came out prompted me to make one slight amendment, which I have referred to, to burglary. Neither the *Canberra Times* report of 28 September last year nor the Institute of Criminology report, *Crime Victims and the Prevention of Residential Burglary*, particularly surprised me. It seemed to surprise the Chief Minister but I am not really surprised about that. A not dissimilar *Canberra Times* poll last year on burglaries gave an interesting example of sentencing options. I think it is worthwhile homing in on this because it is important for this particular matter. Victims are asked:

> People have different ideas about the sentences which should be given to offenders. Take, for instance, the case of a man who is 21 years old and is found guilty of house breaking and burglary for the second time. This time he has taken a colour TV. Which of the following sentences do you consider the most appropriate in such a case?

The result was that 37 per cent favoured community service, 31 per cent favoured prison, four per cent wanted a fine, 11 per cent wanted a suspended sentence and about 10 per cent said that they simply did not know. The most popular recommended sentence for that particular matter would have been community service or imprisonment. They broke up how long a person like that should be imprisoned. The most common area there was that some 27 per cent felt that around six to 12 months would be appropriate. That is completely consistent with what has been said by the people I have spoken to. However, in the court system—I can certainly vouch for this from years of practice there—with multiple burglaries you are rarely dealing with a situation of a 21-year-old who has had one burglary conviction and then has another a little while later for stealing a TV set. Most burglars take a hell of a lot more than a TV set. Most burglars who are caught invariably have a lot more burglaries to their credit—or perhaps one should say to their detriment—than just a single burglary. It is pretty rare to find someone with just one conviction for burglary and then, in a few years time, with another.

I wonder what the answer might have been if somebody gave a more likely scenario: the person is in the same age group but the first time round they were convicted of, say, five or six burglaries and, the second time round, of three or four. I would imagine that most people would probably want them to be sentenced to a time of imprisonment.

Taking all that into consideration, I think a logical suggested non-parole period would be 12 months rather than the two years I had stated earlier. I do point out to members—no doubt when this is finally debated the Chief Minister will probably make a lot of this—that the scenario given was a particularly unrealistic one. Were I to be prosecuting that particular case, I would be surprised if the police informant would particularly want that person to go to jail unless something else warranted it. If asked by the bench, I would not necessarily be recommending that a custodial sentence would be warranted. If it were, I think six to 12 months would be quite logical, as indeed would community service, on the basis of that rather strange and rather abnormal type of example. I make the point that it certainly is not common from my experience in the courts and from what I am continually told by current practitioners on both sides of the fence.

As I said, there are two important additions to this particular bill. I am pleased to say that, after discussions with the Chief Magistrate, I was happy to bring the first one forward—that is, increasing the jurisdiction of the Magistrates Court in criminal matters. It is certainly something that the Chief Magistrate thought was quite reasonable and

which would assist the court. I also had discussions with the DPP, the Legal Aid Office and several private practitioners, all of whom were pretty keen and pretty happy with the idea.

Currently, the Magistrates Court, at section 375 of the Crimes Act, is able to dispose of indictable matters summarily—that is, matters punishable by more than 12 months imprisonment, matters that are a common law offence or currently an offence punishable by imprisonment for a term not exceeding 14 years if it relates to money or other property or, in any other case, 10 years. The court can also deal with a matter where the value of the property does not exceed $10,000—unless it is a motor car, in which case it could exceed a lot more.

My understanding, from discussions with the Chief Magistrate, was that this provision was last amended in 1982 or 1983, but he was not exact about that. I also commend to the government that I think it would be sensible to increase the civil jurisdiction from $50,000 to $100,000, indexed to CPI after that so that we would not have to alter it. But that is probably for another day. It is not the subject of my particular bill. Essentially the proposal here is to increase the maximum term of imprisonment a court can give in the Magistrates Court—which is currently two years maximum; courts are restricted to that—to a maximum of five years imprisonment. That is sensible for a number of reasons. Firstly, courts can deal with fairly serious matters by consent. Often the defendant, the prosecution and everyone are happy if it is dealt with in a Magistrates Court because the matter is finalised quickly. The old adage "Justice delayed is justice denied" is very true here. Quite often that is needed.

Magistrates will often comment—you will occasionally see this in the paper—that they sent a matter up to the Supreme Court because they felt that they were restricted to only two years maximum imprisonment or that the accused's record and the nature of the offence warranted a greater penalty and they felt constrained to do it. That takes a lot more time, there is a lot more angst and additional expense, the police are involved and the defendant might not be particularly happy because they were looking forward to getting the matter finalised and it might take another six months. The matter is basically being done twice because it has been committed for sentence to the Supreme Court.

If everyone agrees, I think it makes eminent sense for the jurisdiction of the Magistrates Court to be increased. I think five years is quite a reasonable figure. I also ran this past the Chief Justice who said that he did not particularly mind. He made the comment to me, which I am sure he will not mind my saying, that magistrates are pretty good, that they do not have a history of abusing their power, indicating very much that they could certainly be trusted with something like this. He said that he did not have a view either way but that he would check with his colleagues. He did that very quickly, and I thank him for that. He got back to me within an hour or so and said that they held the same view—they did not particularly mind either way.

This is a very good step that will probably save a lot of angst, time and money and lead to swifter delivery of justice. Making the maximum term of imprisonment a Magistrates Court can impose five years gives the magistrate the ability, in cases where they do have the power—they feel that two years is too short—to adequately deal with a case. The fine conversely goes up to bring it in line with the five years. Currently it is a maximum fine of $5,000 but that would rise to $10,000, consistent with raising the term from

two years to five years. That is a particularly useful new addition to the criminal law and I certainly commend it to members.

The second important addition is victims' statements. Victims are often the forgotten persons in the criminal justice system. Whilst there have been some advances over the last 15 years, I am still often besieged by victims and regularly getting complaints that they still feel left out, their needs are not taken into account and they are not being listened to. One of the issues Australia-wide which victims have been pushing for and which some jurisdictions are taking up is the ability to be able to read out to a court the victim impact statement. That only occurs after a person is found guilty and has to be done before sentence is passed.

Victims should not be forgotten in the criminal justice system. By the very nature of the system and the way it has evolved over the last 50 or 60 years, everything seems to concentrate on the defendant, especially after the conviction is recorded. Victims—rightly, I think—feel left out. This would allow victims to read out their statement and have their say. They would obviously be cross-examined on it. I must stress that not all victims would want to do this. Some victims would not want to have anything further to do with the system. They would not feel inclined to want to read out their statement and confront the defendant. But some do. Some feel that justice has not been done and that the matter has not been closed until they have had their chance to tell the court of the effect it has had on them and their family. In clause 66 of my bill there is a proposed new section 343 (2A) which implements victim impact statements.

Other matters relating to the Magistrates Court can be found between clauses 70 and 73 on page 23 of my bill. Members will note that in clause 70, proposed new section 375 (1) (b), I have simply combined the 10-year and 14-year offences—assault and robbery and robbery of property take 14 years—into "an offence punishable by imprisonment for not longer than 15 years". If other parts of this bill are accepted, there are increases in the maximum penalties available to courts for a number of middle-ranging and high-ranging offences. That is more consistent than splitting it the way it has been done in the past.

The next clause is clause 71. You might recall that I mentioned the maximum value of property the Magistrates Court can deal with in a crime, apart from a car, is $10,000. Again, in consultation with the Chief Magistrate, I have raised that to $50,000. The value of property has certainly increased in the last 20 years and I think that is far more realistic. You will also note clauses 72 and 73. In clause 72 "2 years nor impose a fine exceeding $5,000" now becomes "5 years nor impose a fine exceeding $10,000". Clause 73 deals with Children's Court matters. The provision is currently "6 months nor impose a fine exceeding $1,000" bringing that up to "2 years nor impose a fine exceeding $5,000". The Children's Court jurisdiction at present has quite a reasonable jurisdiction in terms of imprisoning young people for two years at any rate.

I commend the bill with those further additions to the Assembly. Knowing the nature of the Assembly, I do not necessarily expect a huge amount of support. I note that Mr Stanhope is meant to be bringing in a sentencing bill of his own. I certainly do not have any great problems if we deal with them together when the time comes.

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

Animal Legislation (Penalties) Amendment Bill 2004

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

Title read by Clerk.

MR STEFANIAK (8.30): I move:

> That this bill be agreed to in principle.

Thankfully in most instances Canberra is an animal-loving community. Most of us have or have had pets and most of us, I am sure—in fact, I think all right-thinking people—abhor cruelty to animals. Animals cannot talk or look after themselves. They are dependent on human beings and deserve the maximum possible protection from harm.

I was very happy with discussions I had with the RSPCA, especially its head Mr Tatts. I had a lengthy talk with him at a charity day late last year. The RSPCA have, for some time, desired more realistic penalties for cruelty to animals. These penalties have not been changed for many years and many people are keen to see them increased. On occasions magistrates have bemoaned the fact that the maximum penalty available for cruelty to animals is 12 months imprisonment. There has been only one instance in Canberra of a person being jailed for horrendous cruelty to animals. On occasions magistrates have commented that the range of penalties is very low for really horrible acts.

The RSPCA told me that there have been a lot of studies done which show that there is a real correlation between people who commit cruelty to animals and then go on to be cruel to people and commit other particularly nasty offences on people. The RSPCA suggested to me that, for example, when Martin Bryant was a younger man he used to be cruel to cats—shoot and be quite vicious with cats. We all know what horrendous things he did to people at Port Arthur. I have been informed by the RSPCA—and they certainly should know—that there is a real correlation there.

The current penalty for cruelty to animals is one-year's imprisonment or a fine. A maximum of one-year's imprisonment is half of what you get for a common assault, which is basically pushing someone or even slapping them. It is five times less for an assault occasioning actual bodily harm, which means that you will be drawing blood. It really is a very low maximum penalty and people, including magistrates, have bemoaned the fact that there is little deterrent value.

I have seen some fairly horrible acts of cruelty to animals during my time in the courts—cruelty to individual animals and to animals kept locked up, animals being starved, beaten and mistreated and particularly nasty and vicious acts to animals with crackers. I have heard of instances of defenceless dogs being beaten. There was a particularly horrible act of a dog being beaten with a crowbar. I do not know whether or not the person went to jail for that. There have been a series of really nasty and vicious acts on poor defenceless animals.

This bill proposes to give a more realistic range of penalties for cruelty to animals. Where the current maximum penalty is a fine of 100 penalty units, imprisonment for one year or both, the bill will amend the act and raise it to 500 penalty units, imprisonment for five years or both. That will apply to both section 7—cruelty—and section 8, where someone deliberately causes an animal unnecessary pain. That includes a wide number of things, including failure to provide proper food, water and shelter, abandoning or killing the animal and a number of other things.

Where injury or pain to confined animals is involved, where a person fails to provide an animal with adequate exercise I have also increased the basic offence from 10 penalty units to 50 penalty units. For battery hens, the penalty has gone up from one year to five years. Similarly, for administering poison to animals and laying poison with the intention of killing or injuring an animal the penalties go up from one year to five years. There is a reckless indifferent offence in causing death or injury, which is the lower offence. It used to be 50 penalty units or six months but has gone up to 200 penalty units or imprisonment for two years.

Also, in the case of a person laying poison, without reasonable excuse, where there is a likelihood that it could injure or kill animals, 10 penalty units go up to 50. In section 13, where people use electrical devices to administer shocks to animals, except in a manner authorised by law, the penalty goes up again from one year to five years and 500 penalty units. For using spurs and sharpened or fixed rowels on an animal—section 14—the penalty goes up from one year to five years. For the possession of some items, there has been an increase from five penalty units to 20.

Section 15, for conveying or containing an animal where the animal is subjected to unnecessary injury or pain and suffering there is a penalty of up to five years. In section 16, the penalty for working, riding and driving unfit animals is five years. For matches, competitions and baiting animals the penalty in section 17 has gone up from one year to five years. There are several areas where the penalties go up in section 18 because there are a number of offences within that section.

In section 19, where people other than veterinary surgeons, without reasonable excuse, carry out medical procedures on animals the penalty goes up to five years. I point out to members that there are a number of exemptions in section 19 (2) which are quite sensible and necessary. The Animal Diseases Act has been amended as part of this. There is a penalty for spreading disease of 50 units or six months. Section 54 (1) states:

> (1) A person shall not, without reasonable excuse, knowingly communicate a disease or disease agent to any animal.

The penalty in this case goes up to 200 penalty units or two years. I commend the bill to the Assembly. I think the Chief Minister made some strange comment that the RSPCA or some board had not mentioned it to him. Be that as it may, the RSPCA are certainly very keen to see this occur. I invite members to talk to the RSPCA about why this needs to happen, if they do not realise why it should happen already. This is far overdue. It is something that will be very much welcomed by legislators. This is a much more realistic penalty structure than we have at present. We talk about vulnerable people in here quite a lot, but there is nothing more vulnerable than a poor defenceless animal that cannot look

after itself. It wants to love its owners but its owners may be particularly cruel. Nothing is more sickening than that to a lot of people. I commend the bill to the Assembly.

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

Discrimination Amendment Bill 2004

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

Title read by Clerk.

MR STEFANIAK (8.39): I move:

> That this bill be agreed to in principle.

The Discrimination Amendment Bill 2004 is an important bill. There has been a lot of talk recently about the need for more male teachers. This bill inserts a new clause 34A into the exemptions section of the Discrimination Act, which provides for some positive discrimination where it is really needed. The classic example at present is education, but it could well be that there will be a need to have some positive discrimination for one sex or the other in employment or other areas in the future, and this bill will cater for that.

We in the opposition are motivated to bring this in because we see it as being crucially important at this stage in getting more male teachers and hiring more male teachers into our profession. We believe it is very important for schoolchildren in our schools—especially in our primary schools where there is a real problem—to have male role models during the formative years of their lives. It is particularly important because there is a lot of evidence of children not having a male role model until they get to high school.

Currently, my colleague Mr Pratt informs me—I think people would be aware of these figures—that only 25 per cent of the full-time equivalent of our government schoolteachers are male. The majority are concentrated in our secondary schools. About 25 per cent of the people employed by the Department of Education, Youth and Family Services are males.

Mr Pratt: Only in primary.

MR STEFANIAK: Mr Pratt says that there are fewer male teachers in primary schools. I think it is about 12 per cent. Last week I was told that three primary schools—Duffy, Ainslie and Macquarie—did not have a male teacher on the staff. There may well be more. That is undesirable but it is not uncommon. When I was education minister, there was often one male primary schoolteacher on the staff or sometimes none. From time to time there has been an imbalance between the sexes in specific professions. It is a simple fact of life.

When we were hiring teachers about four or five years ago now I can recall how many new teachers were applying for jobs in our education system. I think we had about 250 jobs on offer and about 950 young people—they were mainly young people—wanted to be teachers. Forty per cent of the applicants were males and 60 per cent were females. I remember saying to the then head of the department, "If we need males why

don't we hire 45 per cent males and 55 per cent females?" I was told, "No. That will be difficult. You will probably go against the Discrimination Act and there will be all sorts of problems there." Of those we hired, 41 per cent were males and 59 per cent were females. It might have been that 40.5 per cent were males and 59.5 per cent were females. That is the percentage of the number of people who applied.

Given that all these people were suitable to employ and that there was a real need at that time—there is still certainly a need, even more so now, to get more men into the profession and to hire them—why on earth should we be restricted by this act? If there are the right checks and balances, why would it not be possible for the department of education to say, "We have got 300 jobs and 900 applicants, of which 350 are men and 550 women. We need a lot more men. Let us hire 200 men." Of the 350 men who applied, 200 got a guernsey. If it is important, if it is going to help the system and if it is desirable and in the public interest it should not be restricted artificially by any act, but this is what the Discrimination Act will do. Accordingly, I have introduced this bill.

As I said, the classic example at present is the teaching profession, but there may well be other examples. For example, there may be a time in the future when we will need more female police officers. For example, they may be needed to ensure that there is a balance in interview rooms or for more sensitive cases. A lot of female police officers might, for some reason, have left the police force and we might desperately need to hire more. Again, this bill would assist there. It might be the same down the track for plumbers. It could apply to any trade or profession where there is a need for a better balance. As I said, this bill introduces a new section 34A, which states:

> Section 10 (1) (a) or (b), section 12 (1) (a) or (b) or section 13 (b), does not make it unlawful for a person to discriminate against someone else on the ground of sex if—

A number of conditions apply, such as:

> (a) statistical data on which it is reasonable to rely show a gender imbalance in a particular profession, trade, occupation or calling; and

The department of education records—good statistical data—show that a certain percentage of teachers are men and a certain percentage are women. Also:

> (b) the discrimination is—
> (i) to assist in overcoming the imbalance; and
> (ii) reasonable having regard to the data and any other relevant factors; and
> (iii) in the public interest.

There is very much a check in there: it has to be in the public interest; the data has to be reasonable to rely on; there has to be a real need, and this will assist in overcoming the imbalance; and it has to be reasonable having regard to the data and any other relevant factors. It is important that departments and other bodies are able to do these things where it is very much in the public interest. Going back to the example of teachers, quite clearly there is ample evidence that it is very much in the public interest and in the interests of our young people, our most nation's most precious resource, to have more men in this most critical and important profession. This bill will assist in enabling that to occur and in redressing other imbalances that we might see down the track from time to time. I commend the bill to the Assembly.

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

Gaming Machine Amendment Bill 2004 (No 3)

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

Title read by Clerk.

MS DUNDAS (8.47): I move:

> That this bill be agreed to in principle.

The objective of the Gaming Machine Amendment Bill 2004 (No 3) is to ensure that Automatic Teller Machines (ATMs) are not present in venues that are licensed to operate gaming machines under the Gaming Machine Act 1987. The ACT Gambling and Racing Commission's review of the Gaming Machine Act 1987 recommended that ATMs be prohibited from gaming licensee's premises. This recommendation was based on research conducted by the Productivity Commission in Australia's gambling industries and from the survey of the Australian Institute of Gambling Research on the nature and extent of gambling and problem gambling in the ACT. This bill, most simply, seeks to implement the ACT Gambling and Racing Commission's recommendation.

The bill only prohibits ATMs in gaming venues, but not EFTPOS facilities, ensuring patrons may still have access to cash facilities at gaming premises. This is in line with the recommendation from the ACT Gambling and Racing Commission. As the commission points out:

> … the benefits of EFTPOS facilities compared to ATMs include:
>
> Users are generally restricted to smaller limits of cash (venue imposed limits);
>
> Gaming machine licensees should become more aware of users that repeatedly use the EFTPOS facilities (particularly in a short period of time). This would assist the providers in identifying possible problem gamblers and enable them to take the appropriate action … (provision of contacts for counselling, etc);
>
> Patrons with a need for cash are still able to access cash …;
>
> Problem gamblers will be subjected to a reality check should they require cash …

Interacting with another human being provides a check on time and a check on the amount of money that has already been spent. This is a really important part of helping problem gamblers realise what they are doing.

Research conducted by the federal government's Productivity Commission shows that problem gamblers are the biggest users of ATMs in gaming venues. Ninety per cent of patrons who are not problem gamblers say they use the machines rarely or never whereas 75 per cent of problem gamblers use the machines regularly to withdraw cash. The removal of ATMs from gambling venues is targeted squarely at problem gamblers. It is

important to note that 75 per cent of problem gamblers say that they use ATMs regularly whereas 90 per cent of patrons who are not problem gamblers say they use the machines rarely or never. Other patrons rarely use ATMs but problem gamblers regularly use them. The fact that this bill retains the ability for venues to have EFTPOS facilities means that those patrons who wish to withdraw cash can still do so without leaving the venue.

The ACT Gambling and Racing Commission discussed the comparison between EFTPOS machines and ATMs at some length. The ACT Gambling and Racing Commission report states:

> Currently the provision of cash through an EFTPOS facility requires the patron to interact with an employee of the licensed premises. This does not need to occur with an ATM. ATMs can be, and quite often are, placed in a restricted corner of the premises where little, if any, monitoring of the use of the facility is maintained. This would enable a problem gambler to repeatedly utilise the cash facility with no knowledge by the gaming licensee or their employees. With the EFTPOS provider-customer interaction, repeated or excessive use should become obvious to the provider. The lack of anonymity that an EFTPOS facility provides when compared to an ATM could also provide the 'reality' check that many problem gamblers are said to require.

The proposal that I am putting forward this evening is not unique in Australia. Tasmania has never allowed ATMs in poker machine areas and there are no calls for it to do so. There is no campaign mounting in Tasmania saying, "Let's put ATMs next to the poker machines." South Australia recently introduced additional restrictions on ATMs and Queensland places limits on withdrawals. Jurisdictions across Australia have been increasing regulation on the provision of cash facilities in gaming venues in recognition that easy access to large amounts of cash can encourage and exacerbate problem gambling and cause significant social harm. Of course, there is some concern that harm minimisation measures such as removing ATMs from gambling venues will reduce gambling revenue. I think it is fair to say that this is a fundamental reason for opposition to these types of reforms.

The survey of the extent and nature of problem gambling in the ACT estimated that problem gamblers generated about half of the revenue from poker machines. It is estimated that problem gamblers generated some $62 million from poker machines in the territory. I think we have to realise that, despite the fact that the territory gains revenue from gambling—we use that revenue to fund a whole lot of services and clubs use gambling revenue to support other worthwhile community activities—this does not make it ethical to take money from people who have a serious gambling addiction. It is the first responsibility of members of this Assembly to ensure that those people in our community who are at risk are protected before protecting the revenue of gambling providers.

This bill is intended to commence on 1 January 2005. This will give gaming machine licensees sufficient time to ensure the removal of existing machines. If a licensee is unable to remove the ATM before the commencement of this bill, the bill inserts a clause allowing licensees to apply to the Gambling and Racing Commission for an exemption from the operation of the proposed prohibition for a reasonable period to allow them sufficient time to remove the ATM from their premises.

We are not trying to make it harder for clubs to operate. We are trying to support and help those who have a problem gambling issue. This is a matter that is targeted directly at reducing problem gambling and helping those in need. Removing ATMs is a simple and effective way to help reduce problem gambling and to stop so many lives from being damaged by this addiction.

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

Building (Water Efficiency) Amendment Bill 2002

Debate resumed from 13 November 2002, on motion by **Mrs Dunne**:

> That this bill be agreed to in principle.

Motion (by **Mrs Dunne**) agreed to:

> That order of the day No 8, Private Members' business, be discharged from the *Notice Paper*.

Live music—value to the community

MS TUCKER (8.56): I move:

> That this Assembly:
> (1) recognising the:
> (a) value of viable live music to youth and wider cultural development;
> (b) importance of viable live music venues to that activity; and
> (c) need to encourage live music and performance through appropriate licensing and environmental protection regulations;
> (2) calls on the ACT Government to consult with relevant stakeholders to:
> (a) develop a program to support and encourage youth music with particular focus on:
> (i) the provision of resources and opportunities, such as access to public address equipment and rehearsal space; and
> (ii) a review of licensing controls to provide incentives for venues to conduct "all-age gigs";
> (b) develop options for encouraging live music and performance activity, including consideration of:
> (i) amendments to building, planning and environmental (sound) regulations in the light of increased residential accommodation in city, group and town centres; and
> (ii) existing rights protection for live music venues, identifying live music as a public benefit; and
> (c) report back to the Legislative Assembly in the first sitting week of August.

This motion had its genesis in the unfortunate saga of the Gypsy Bar that ran in two venues through most of the 1990s and closed at the end of 2002. The Gypsy was a venue committed to live music and was first set up in a room downstairs in East Row. I think it was a live music venue called the Terminus before then. It is important to bear in mind that live music is not usually a great money spinner—certainly not live music that

includes and provides opportunities for local groups, emerging bands, musicians, DJs and so on.

Diagonally above the Gypsy Bar was a shoe shop that, because of the changing nature of retail, closed around 1996. A coffee shop, Cafe Macchiato, then opened up and in 1997 extended its reach to become a late night bourbon bar. The live music from the Gypsy could be heard in the bar above. The Macchiato's owners looked to the sound and environment regulations and, in the end, the Gypsy's business was made impossible. After moving to a new venue, followed by several court cases—the last of which the Gypsy lost—the Gypsy had to close.

Cafe Macchiato is doing quite well but it does not host live music; it simply sells alcohol, coffee and food. A new live music venue in Canberra is Toast. It is just up on the Boulevard Plaza behind ActewAGL House. It has also had some trouble with noise from punters spilling out of the venue at night during an entertainment break to have a cigarette and disturbing the rest of the guests of the nearby Waldorf. As far as I am aware none of the units, which were recently installed in what was an office building, have double-glazed windows.

Indeed, while we are talking about inner city residents being disturbed by noise, I am reminded of the residents in the apartments just next to Canberra Times Fountain, outside the Canberra Centre, moving into this new, exotic setting and then complaining about the noise of skateboards. Anyway, the loss of the Gypsy Bar was quite significant both to the entertainment landscape in Canberra in general and in the opportunities available to young people to make a creative contribution to their, and our, culture.

Recent analysis across Australia and in other developed nations points to the significance of cultural vitality as an indicator and as an attractor for economic strength. The Australian Local Government Association's 2002-03 State of the Regions report applies four indices—cultural diversity; same-sex couples; innovation, patents; and bohemian—arts activities—to Australian regions to an analysis of regional development potential in its examination of what is known as "the Florida effect." There are measurable economic as well as self-evident social benefits to public policy support for an active, creative culture.

The question of supporting live music and live performance more generally is not just of interest in Canberra. Over the past few years there have been fairly major investigations in Brisbane; New South Wales; with Australia Council support; and, most recently, Melbourne. I have information on most of this work in my office if the government or members are interested. Common threads emerge in all this work: the need to establish zones that are music and culture friendly; the value of some form of existing rights protection so that venues cannot be closed down by usurpers through spurious noise complaints; the importance of a diverse range of support mechanisms for new and young musicians; and the benefits of collaborative promotion and marketing programs.

Around the middle of last year these issues of existing rights legislation and the limits of the live music scene in Canberra were raised in the *Canberra Times*. As there was clearly a wider interest in the matters I organised a public forum here at the Assembly. It was extraordinarily well attended. I have the contact details of all the attendees who represented a wide cross-section of interested people, including producers, musicians,

venue managers, teachers, DJs and writers. At the forum a very strong view came forward that there are changes we could make in how we organise the city, and programs that we could reasonably expect government to fund to support live music and performance.

Not all the answers lie with government, by any means. It was also agreed at the forum that collaborative marketing and a more sophisticated approach to promotion are needed and that such an approach would need to be taken on by the industry itself. It was also acknowledged in the various reports and at the forum that today's entertainment environment is very different from the 1980s and that we should not imagine that a few new planning laws could bring back the halcyon days of "pub rock" or even that we would want that to happen. The point of this motion, however, is to call on the government to explore a whole-of-government approach to encouraging live music. You might notice that it calls on the government to consult the stakeholders, ask for options for legislative change and to report back in August.

This might seem like a fairly gentle approach but the detail of the issues is quite complex and trying to push through a raft of subtle changes without enthusiasm or support from government agencies is probably guaranteed to fail. As I understand it, there were some government officers present at the forum and they took the concerns that came from the community to the government. I understand the government is quite supportive and interested in the whole issue. I think this motion will ensure that government will explore what is possible with a coherent approach and give us in the Assembly the option of leaving that responsibility in government hands thereafter or pursuing it ourselves here or at the election. I commend the motion to the Assembly.

MR WOOD (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for Police and Emergency Services, and Minister for Arts and Heritage) (9.02): The government certainly supports the sentiment of the motion and, I guess, the motion itself. We are all aware of the value of live contemporary music to our young people and to the community more broadly. Indeed, the economic white paper that Mr Quinlan presented so well recognises the importance of retaining young people in Canberra. Research has revealed that one of the key reasons young people leave here is because they do not think the place is lively enough.

As arts minister I firmly believe that a vibrant live contemporary music scene is essential in enlivening Canberra. It is important to note that Canberra does have a very active live contemporary music scene, although I confess it is not a scene I attend to particularly. You might be aware of the BMA magazine. There is seemingly a vast number of bands, most of which, although not all, are local. Every Thursday we get the *Times Out* supplement in the *Canberra Times* that tells us of all the gigs that are on. Our own consultations with young people have revealed that their attendance at and participation in live contemporary music is affected firstly by the paucity of events for under 18s—the younger people—the affordability of events, noise restrictions and the affordability of insurance. None of these issues is unique to the ACT but we need to address them.

The government already supports young people's access to live contemporary music through a number of avenues, some of which include the youth services branch. They have agreements with a number of non-government youth service providers that provide support to young people to practise and perform live music at a range of youth centre

facilities. The Youth InterACT grants program supports young people to organise events and activities for other young people, including music and entertainment events.

Support is available and regularly provided for contemporary music activities by and for young people through the Arts Funding Program. For example, Indifest—Canberra's live contemporary music festival—has received significant support through the arts program over recent years. The arts program also provides money for groups to run off their own CDs, and the Tuggeranong Arts Centre has a wonderful expanding program for young people and live music. We may support the sentiment of the motion and put it into effect but the calls and claims are not easy or straightforward, as has been seen with a similar occurrence—the racing plan at Fairbairn. That is comparable. They maintain, as Mr Stefaniak well argues, prior rights to make the noise they do, and yet of course they impinge on neighbourhood amenity.

Mr Stefaniak: Only one person thinks that, Bill.

MR WOOD: That may or may not be but it is a comparable example. It is an issue that has been debated over a long period.

Ms Tucker mentioned the problem of skateboarders. I have had an approach from a person I know who is now living in the city area who is disturbed by the trucks that come and clear the rubbish. I think they can come in only after 6.00 am. The fact is that, if you come into the city area, you must generally expect some noise. I have a biased view about this. I was brought up in a provincial city. I lived straight over the road from the showgrounds where there was never-ending activity and noise, and I never gave it a second thought. I had a person come in who wanted a rural retreat in Canberra. This is a pretty quiet city but you cannot be altogether quiet.

So there is a whole range of comparable issues, but we will focus on the issue of youth music and what might be done. The government already reviews all of these issues regularly but we will consider in detail the specific questions Ms Tucker's motion asks and report back. It seems that Ms Tucker always wants a very short timeframe. I know the Assembly's time is running out but we will do our very best in the time allowed.

MR STEFANIAK (9.07): The opposition will be supporting this motion. I tend to agree largely with what Mr Wood has said. When I looked at it I found the motion rather amusing, especially section (2) (b) (i). It is sensible and you would need to do it: develop options for encouraging live music and performance activity, including consideration of: (i) amendments to building, planning and environmental (sound) regulations in the light of increased residential accommodation in city, group and town centres.

I think that is the first time I have heard Ms Tucker wanting to allow for an increase in noise. It does contrast very differently with what Mr Wood quite rightly refers to as her attitude towards Fairbairn Park. In my view that has been unfairly restricted—unfortunately because of the opinion of one rich selfish man. I think that is a real shame. I am delighted that now, even though she will not be with us much longer, Ms Tucker recognises that there is sometimes a need for noise—a bit of sound for the community good. I think that, with proper planning and consideration, this could well prove quite a popular move. Mr Wood indicated that he has lived next to a showground. A lot of people, especially younger people living in the city, may well have no problem with a

lively night life and a fair bit of noise as a result because it will, in its own way, enhance the amenity of a place like Civic.

Mr Wood has given a pretty good rundown of what programs are already available. I have one slight reservation, again in clause (2) (a) (i)—although I think Ms Tucker has worded it reasonably well—where she wants the government to consult with stakeholders to develop the program et cetera, focusing on the provision of resources and opportunities. As I understand it she qualifies that by saying "…such as access to public address equipment and rehearsal space"—rather than just forking out a whole lot of dollars. I think there are quite a few good potential programs in the arts grants where people can access dollars. I read that she wants access to public address equipment and rehearsal space, which is very important.

I think it is important to develop live music for youth. This will—and I know it is probably not just youth—bring wider cultural development. It is a great way of expressing yourself. To work as a group in a band is a great way for young people to bring out their creative talents. I had the pleasure of opening a youth band festival here only a few months ago. It was a tragedy that WIN was called somewhere else but it was great to hear a couple of the groups perform—they were performing throughout the city. This is a regular occurrence and is a great way for a number of groups to develop, including local groups. Some have gone on to do very well indeed. I believe there is a lot of really good stuff in further developing live youth music. Some of the suggestions in the sentiments of the motion like access to public address systems and rehearsal space are very sensible.

I thought it was quite funny to hear Mr Wood talk about gigs. All-age gigs is an interesting concept, Ms Tucker. I wonder if that means that the rugby choir, which is hardly youthful—in fact, I tend to bring down the average age of it, which is pretty scary—could attend an all-age gig. I hope so; we might be able to sing! Ms Tucker, good luck with this and if you get a few more live music venues for young people in the city, I reckon that would be a pretty good thing. I look forward to going along and maybe singing *48 Crash* there once. I was going to end with a song but, as it is late at night, I probably will not.

MS TUCKER: Go on, Bill!

MR STEFANIAK: Well, I gave it up for music and the free electric band—try that, Hansard. Anyway, good luck, Ms Tucker.

MS DUNDAS (9.12): I want to make it quite clear that I will be supporting this very timely motion. I think it is good that this Assembly is having this debate. Live music is an integral part of our society. Live music has been part of society and culture for centuries—coming around the campfire or the corroboree. The songs that have been sung throughout the ages are very much a part of who we are. But over the last decade we have seen that live music has suffered. Community forums to celebrate culture have suffered setbacks as venues have been forced to cut down on live music due to noise complaints—and venues are trying to increase revenue by replacing their live music space with a few poker machines.

In cities around Australia, including here in Canberra, we have seen venues close as people have moved to inner city apartments, attracted to the lifestyle of being in the thick of the action. But once they settle in they start complaining about the noise and unsavoury characters that they believe are hanging around. For venues that have been operating for decades to be forced to close because a block of units has been built next door is heartbreaking for the owners, patrons and performers. The Gypsy Bar is a case in point. It was first forced to move and eventually forced to close down.

The Gypsy Bar was a place I really enjoyed going to. I have listened to many different live music gigs there and had an incredibly good time at that place. It has been hard to find a venue that replaces what the Gypsy Bar had to offer. But there is some hope. Around Australia we have seen commonsense eventually prevailing. After the closure of several venues in Fortitude Valley in Brisbane—and there were extensive legal battles over others—the Brisbane City Council has released its draft Valley Music Harmony Plan. In December last year the Victorian government's Live Music Task Force released their report. As this government here in the ACT loves nothing more than a good plan or draft report, I think there is reason enough for the government to come on board with this motion.

The draft Valley Music Harmony Plan and the report of the Victorian Live Music Task Force were both developed in conjunction with stakeholders and have the same aims as this motion. They recommend existing rights protection for live music venues and recognise the value of live music. I attended the forum that Ms Tucker has talked about. I remember clearly from that forum not only the discussion about the problems with existing rights recognition but also the fact that, over the last decade, we have seen so many venues disappear that there are not a lot of venues left to protect their rights. We need to be proactive about allowing live music venues to come back into areas where they once thrived.

I do not think it is just about existing rights; we also have to look at the rights that have been lost and how we can reinstate them. As this motion states, live music is valuable for young people and wider cultural development. Through the Canberra plan we have seen that this government is desperate to have Canberra as a vibrant, dynamic city. They want thousands more to move into Civic and experience the lifestyle on offer in the heart of Canberra. However, the reason why these people will move—the vibrancy and dynamism—will be lost if nothing is done. I think it was an oversight of the Canberra plan that it did not recognise the value of live music. Young people were conspicuously absent from much of the Canberra plan and that is a major disappointment as well.

I think one of the important considerations of this motion is that we would be able to support the local community. It was disappointing that, when the ACT hosted the National Australia Day Concert for 2004 and the naming of Australian of the Year for 2004, up on that stage there were no local bands. We have a great number of local bands here in the ACT. Had they had more venues, to enable them to expand and get better experience and work on their craft and their art, they would have made an amazing contribution to that concert. Instead we shipped in performers from out of town and the opportunity to showcase Canberra to Australia was lost.

The minister has put forward that there must be a thriving live music industry because there are so many different magazines. I regularly read both *BMA* and *Times Out*, and they have extensive gig guides. They are not always comprehensive but they are extensive. There is an internet gig guide for the ACT and the Just Bands website. They are just a few. The number of venues listed is dwindling, and the number of bands that need to move to Sydney or Melbourne to expand their craft is growing. So we need to look at what we are doing here in the ACT to support local talent and grow that local talent.

MR SPEAKER: Order! Ms Dundas has the floor.

MS DUNDAS: This motion gives us the opportunity to provide direction for live music in the territory, to diversify what kind of arts we deem it important to support. We have great talent here in the territory and more opportunities for these acts such as MeetBEE, Little Smoke, Funk Shui, and Dubba Rukki to get to play. It would be better for the music scene and would provide more opportunities for those and other acts to get their big break. That will make Canberra a much better place.

I have had a number of discussions with some people who are very interested in supporting young people in the ACT to have a safe space in which to rehearse. We are talking here about live music venues for people to perform in but they also need rehearsal space. We have all heard stories about the kid next door banging on his drum until all hours.

MR SPEAKER: Order, members! There is too much audible conversation going on.

MS DUNDAS: People are finding it harder and harder to find venues in which to rehearse, so we need to look at that issue as well. I have information and, if this motion is successful, I will happily refer people on to the government so that their ideas, vision, great music expansion and rehearsal venues can be developed in the ACT. That would be a very beneficial addition to the diversity of projects already running here in the capital. If you ask any young musician what is the hardest thing about being a musician, they ultimately say that it is finding a venue at which to play. Let us hope that this report will get some movement happening, and that after August that will no longer be the answer from many young musicians here in the ACT.

MRS CROSS (9.21): Very briefly, this—

Mrs Dunne: I rise on a point of order, Mr Speaker. I do not mean to interrupt. I did not raise this as a point of order before, but the level of conversation was very high. The only reason I did not add to it by making a point of order was because people were already sufficiently distracted. Could we ask people to go out into the lobby? It is very hard to hear.

MR SPEAKER: Order, members—and especially in the gallery. Could you use the lobby for negotiations please.

MRS CROSS (9.22): Thank you, Mr Speaker. I just wanted to commend Ms Tucker on her motion and say that this still independent member will support this motion.

Question resolved in the affirmative.

Environment Legislation Amendment Bill 2004
Detail stage

Clause 1.

Debate resumed from 4 May 2004.

Clause 1 agreed to.

Clauses 2 to 6, by leave, taken together and agreed to.

Clause 7.

MS DUNDAS (9.23): I seek leave to move amendments 1 to 3 circulated in my name together.

Leave granted.

MS DUNDAS: I move amendments Nos 1 to 3 circulated in my name *[see schedule 1 at page 1912]*.

Mr Speaker, the issue of strict liability offences is one that has been raised constantly by the scrutiny of bills committee. It was raised again by the scrutiny of bills committee with regard to this bill. I note that, in addition to the 100 penalty unit offences mentioned by the committee, there are also penalties of 500 and 1,000 penalty units. This would make these the largest penalties for strict liability offences ever passed by the Assembly since the introduction of the Criminal Code.

The scrutiny of bills committee has repeatedly raised rights objections to the introduction of strict liability offences. This is particularly the case where a defendant has taken due diligence to comply with the law. By imposing a penalty upon someone, despite no requirement to prove a fault or admit elements to the offence, and disregarding any evidence the defendant took all reasonable action to prevent the contravention, the penalty may be widely seen as unfair and unwarranted by both the defendant and the community at large, particularly when the penalties are so very high.

My amendments do not actually change the level of the penalties as there is a reasonable argument that penalties should remain consistent across both the Environment Protection Act and the Nature Conservation Act. However, these amendments insert a defence of due diligence which maintains the approach taken in the Environment Protection Act which specifically includes a defence of due diligence. This approach ahs been omitted in this bill, and these amendments seek to ensure consistency across the two acts.

The form of defence is reasonably specific; the burden of evidence is on the defendant and cannot be used if the prosecution can prove that the defendant did not take any step that was reasonable. The defence is not as vague as a reasonable-excuse defence that exists in some other pieces of legislation and has attracted adverse comment.

I will be moving similar amendments later that reflect these changes in another part of the bill.

MS TUCKER (9.25): Ms Dundas's amendments are about the ongoing discussion we are having in this place on the use of strict liability offences. In this case the penalty units for the offences are much higher than those of any other strict liability offences that the Assembly has accepted so far. This is a problem because strict liability as a legal concept was supposed originally to apply only to essentially administrative offences, not to situations where imprisonment is a possible penalty.

The Senate committee, in its sixth report of 2002, considered the issue of strict and absolute liability, which our scrutiny of bills committee referred to extensively. Ms Dundas referred to this in her in-principle speech and I would like to quote some of the Senate committee's conclusions as quoted by the scrutiny of bills committee:

> The [Senate] committee concluded that there were certain basic principles which should constitute the starting point for Commonwealth policy on strict and absolute liability, as follows:
> - fault liability is one of the most fundamental protections of criminal law; to exclude this protection is a serious matter;
> - strict liability should be introduced only after careful consideration on a case-by-case basis of all available options; it would not be proper to base strict liability on mere administrative convenience or on a rigid formula; ...
> - strict liability should, wherever possible, be subject to program specific broad-based defences in circumstances where the contravention appears reasonable, in order to ameliorate any harsh effect; these defences should be in addition to mistake of fact and other defences in the Criminal Code.
> - strict liability offences should only be applied where the penalty does not include imprisonment and where there is a cap on monetary penalties; the general Commonwealth criteria of 60 penalty units, ($6,600 for an individual and $33,000 for a body corporate) appears to be a reasonable maximum.

So in this case, where the penalties are as high as 1,000 penalty units, if we take the Senate committee's penalties seriously, then we need to have some defences. The defence posed in Ms Dundas's amendments retains much of the strictness of this offence.

Clearing native vegetation in a reserved area is a serious assault on the values of nature reserves and, as far as those values are concerned, once the clearing has happened the damage is done. It is difficult to imagine a situation where someone could accidentally clear a significant area causing serious harm to the reserved area. But we need to be careful about creating strict liability offences.

Ms Dundas's amendments put the onus on the defendant to establish their defence, but they do allow that, in situations where the defendant took all reasonable steps to avoid committing the offence, they have a defence. This is just. And the Greens will be supporting these amendments here and in other parts of the bill.

MRS DUNNE (9.29): Ms Dundas is on a crusade about strict liability provisions, and it is a crusade that must be commended. There are many occasions when she has come in here and pointed out the inconsistencies in legislation as they relate to strict liability

provisions. It is an issue that, as legislators, we should be increasingly cautious about. Ms Tucker essentially makes the point that, over time, there has been the gradual increase in the sorts of penalties that attract strict liability penalties and we need to be very vigilant indeed.

I think that the approach suggested by Ms Dundas is about as good as we can get in the circumstances. On the basis of that and because we need to keep sending a message, Mr Speaker, that this is an area of concern, an area where we must be cautious, and we must go forward gingerly, the Liberal opposition will be supporting Ms Dundas's amendments, because they do send a message.

Amendments agreed to.

MS TUCKER (9.30): I move amendment No 1 circulated in my name *[see schedule 2 at page 1913]*.

I spoke to these amendments at the in-principle stage of the debate, but I will repeat those arguments here for members. This first amendment is about plans of management. Section 60I would establish lawful clearing as:

> (a) clearing of native vegetation in accordance with a licence … ; or
> (b) in accordance with a plan of management under the *Land (Planning and Environment Act) 1991*, division 5.7 (Public land; or
> (c) in accordance with an approval for a development under the [same] Act; or
> (d) in accordance with a fuel management plan under the *Bushfire Act 1936*, part 6 …; or
> (e) if it is necessary and appropriate to avoid an imminent risk of—
> (i) serious harm to a person; or
> (ii) substantial damage to property; or
> (iii) serious or material harm to the reserved area.

These exemptions mean that not every instance of proposed clearings will be subject to assessment against the specific goals of the nature conservation plan.

My amendment 1 is to omit the licence exemption for work in accordance with plans of management. Plans of management are prepared for all public land in the ACT. While there will be some detailed consideration in the plans, they will not look at specific sites of proposed activities in the same level of detail as should be used when making a licence assessment. For this reason, I think it is reasonable and prudent in a nature reserve to require a specific licence, which means this specific assessment will be carried out by the Conservator of Flora and Fauna in accordance with the objects of the reserve. I think that that is the least we can ask when we are looking after our nature reserves.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (9.32): Mr Speaker, the government will support this particular amendment. As Ms Tucker has explained, omission of this paragraph would mean that a person carrying out work in a nature reserve pursuant to the plan of management would need to get specific approval from the conservator in the form of a licence.

Mr Speaker, management plans under the land act are made by the Conservator of Flora and Fauna. Allowing work pursuant to the plan of management to take place without further reference to the conservator does make sense because it is work that the conservator has in essence already agreed to. It is the conservator, after all, who is the manager of the nature reserves, and work done to manage the land is done at the discretion of the conservator. The government is happy to support this particular amendment.

MS DUNDAS (9.33): For one reason, time, I will speak to Ms Tucker's amendments Nos 1, 2 and 3. I know she has not moved 2 and 3, but they all relate to clause 7. If there is a problem with that, just stop me now. But the Democrats are supporting these amendments.

MR SPEAKER: There is a slight problem. You are only supposed to speak to No 1.

MS DUNDAS: I will speak only to amendment No 1 but, in speaking to amendment No 1, I foreshadow that I will support amendment No 2 and amendment No 3.

The bill, as tabled, contains a number of exemptions from the offences created by the bill. These are when vegetation is cleared in accordance with a plan of management for the public or for a development approval of a fuel management plan under the Bushfire Act. Ms Tucker has made the argument that these plans should not automatically give people the right to clear native vegetation. And there is no clear reason for automatically absolving a person from the offences in this act simply because they are done under one of these plans or approvals. There are, of course, different ways of conducting land clearing, and some will have fewer impacts than others. This is the type of question that is within the purview of the conservator when these licences are granted and so there is no need for a blanket exemption.

I note that Ms Tucker has not proposed to amend the clauses that deal with emergencies, and in cases of emergencies these offences will not come into effect and the Criminal Code that provides a defence of emergency as a defence confirms this. So while removing these clauses will probably result in minor additional paperwork it will not affect the capacity of land managers in any momentous way. I note that the conservation officers are exempted from the provisions of the act in any case.

The additional step of applying for a licence will provide an additional level of oversight that land clearing or land damage is not occurring unduly and the capacity to safeguard our protected areas will be maximised.

Amendment agreed to.

MS TUCKER (9.35): I move amendment No 2 circulated in my name *[see schedule 2 at page 1913]*.

This amendment would omit the licence exemption for work in accordance with a development application. The government has argued that in the case of a development application related to a nature reserve the land manager who is, in this case, the Conservator of Flora and Fauna must be consulted, and the decision-maker must take

into account what the Conservator of Flora and Fauna says. There will be input from the scientists in the wildlife and research monitoring unit. However, although the same people may be involved, there is not the same requirement in this process or in this decision-making framework to emphasise the protection of the nature reserve.

When a decision about a licence is made, the sole decision-maker is the Conservator of Flora and Fauna, and the sole criteria for decisions are the guidelines for the nature park and the nature conservation plan. The government is concerned that this means a second layer of bureaucracy, but this is forgetting the purpose of the nature reserve. If we cannot say that the most important consideration in a nature reserve is the protection of nature, then I think we are seriously missing the point.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (9.37): The government will not support this particular amendment. Paragraph 60I (c) would make land clearing lawful if it is in accordance with a development approval under the land act.

If work that includes land clearing in a nature reserve requires development approval the land act requires that the Planning Authority consult with and take into account the comments of the Conservator of Flora and Fauna. If the land clearing is greater than half a hectare there would also be impact assessment under part 4 of the land act, a process the conservator has significant input into. This means that the conservator has two opportunities to assess the project, have impact into how it will be approved and what steps would be required to minimise impacts on nature conservation values.

What paragraph 60I (c) does is provide that, after the conservator has provided input and had appropriate conditions imposed one or two times already through a development process, there is no further need for the proponent to seek further permission from the conservator to carry out the work. The proposal by Ms Tucker and the Greens to remove the paragraph, which would serve to add another layer of administration to projects that require development approval, would not add any value at all to the process and on that basis, the government opposes the amendment.

Question put:

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

A division having been called and the bells having been rung—

An incident having occurred in the gallery—

MR SPEAKER: The sitting is suspended until the ringing of the bells.

Sitting suspended from 9.40 to 9.54 pm.

MR SPEAKER: We were in the middle of a division. We will ring the bells to call the division again.

The Assembly voted—

Ayes 2	Noes 15	
Ms Dundas	Mr Berry	Ms MacDonald
Ms Tucker	Mrs Burke	Mr Pratt
	Mr Corbell	Mr Quinlan
	Mr Cornwell	Mr Smyth
	Mrs Cross	Mr Stanhope
	Mrs Dunne	Mr Stefaniak
	Ms Gallagher	Mr Wood
	Mr Hargreaves	

Question so resolved in the negative.

Amendment negatived.

MS TUCKER (9.59): I move amendment No 3 circulated in my name *[see schedule 2 at page 1913]*.

The rules for preparing a bushfire fuel management plan do not at this point include a requirement of an inclusion of expertise on fire ecology, that is, the effect of fires of different types on the ecology of an area and, in some cases, vice versa. The CEO of the Department of Urban Services, the relevant land manager, is responsible for preparation of the bushfire fuel management plan. The plan is prepared with the relevant land managers. In the case of reserve land, the Conservator of Flora and Fauna, who is also the CEO of the environment department, is the responsible land manager and so has direct input into the plan, as it was explained to my office.

There is no formalised arrangement for consulting with relevant types of experts, but the practice has been to consult widely. The last bushfire fuel management plan, which had been put into operation but not completed by any means when the bushfires came last year, was developed by a good cross-section of experts.

This is a difficult area to object to, and indeed the government response to my concerns about this exemption was that it would be inappropriate to give the Conservator of Flora and Fauna an effective veto of the bushfire fuel management plan. But I think that this objection assumes that there is an inherent conflict between bushfire fuel management and conservation, and this is strange as it is definitely not in the interests of a reserve to be at risk of being completely burnt out. However, it is also not in the interests of a reserve, nor arguably the interests of bushfire risk reduction, to have too frequent burns at the wrong season and without proper consideration of the effects of the types and timing of fire on the particular species in an area.

It is also important to consider the effects of the different species, ecosystems and landforms on the progress of fire, particularly in a reserve. We should ensure that this kind of detailed consideration happens, and as I see it at this stage the only way to ensure that is to require a licence. This does not affect any work that is done in an emergency. It affects only the planned activities for bushfire reduction, and I think this is reasonable.

There is probably more work to be done in refining the statutory requirements of preparation of a bushfire fuel management plan. My great concern is that although the process has included many points of view in the past, in a political context of extreme fear, the processes, which did take in a range of expertise, will be narrowed.

As I say, in this context and without the requirements to bring in all the relevant expertise, I am not comfortable with a proposal to let a bushfire fuel management plan stand in for a licence assessment. I understand that this is a bit controversial, but I say again that it is certainly not in the interests of a nature reserve to be burnt out, and so the aims of bushfire prevention and nature conservation are not at odds. The thing is to ensure that the knowledge of the particular ecology is considered, and there is no guarantee in the bushfire fuel management plan process that this will occur.

The extra point I will make here, although I think I have made it before, is that, if you in fact do hazard reduction burning without an understanding of the ecology, you can actually end up with a more flammable undergrowth because you end up only with those species that can resist the fire, and that can actually result in greater fire risk.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.02): The government will oppose the amendment. Paragraph 60I (d) would make land clearing lawful if it is carried out in accordance with a bushfire fuel management plan prepared under the Bushfire Act 1936. The bushfire fuel management plan is prepared by land managers through a public consultation process and in conjunction with the Bushfire Council. The parts that relate to nature reserves are prepared by the ACT Parks and Conservation Service under the supervision of the Conservator of Flora and Fauna.

The amendment proposed by Ms Tucker would require that virtually any activity under a fuel management plan would have to be individually licensed before it could be carried out, that is, those charged with carrying out the work already approved by the conservator would have to return to the conservator and once again ask for permission to do so. Once again, the Greens seek to add a needless extra layer of administration in the name of nature conservation that would have absolutely no effect and add absolutely no value.

The Greens have said, in effect, that the process for making the fuel management plan does not guarantee that the regime proposed will be appropriately sensitive to nature conservation values. Their solution is to involve the conservator in licensing these activities, but since it is the conservator in the first place, aided by the professional conservationists in the parks and conservation service, that makes the plan, there simply would be nothing added by this further step. It would be simply asking the conservator essentially to re-license a plan that she or he had already approved. The government opposes the amendment on that basis.

MRS DUNNE (10.04): The Liberal opposition will be opposing Ms Tucker's amendment, for essentially the reasons outlined by the Chief Minister and Minister for Environment. Ms Tucker has expressed a concern about how we put together bushfire fuel management plans and says that we need to have a bushfire fuel ecologist involved in that process. If we want to do that, let's amend the legislation that looks after bushfire

fuel management plans, not the licensing provisions under the Nature Conservation Act. Let's do it in the right place. If Ms Tucker wants to bring in amendments to that end, I would be happy to consider them. But this is not the place and this is not the time.

The points made by the Chief Minister and Minister for Environment are apposite. What Ms Tucker has done is created a circular system of approval. If the conservator approves the bushfire fuel management plan, then she would have to again re-approve every single action under that on reserved land. It is an unnecessary approval and the opposition, which is ideologically opposed to red tape and repetition in bureaucracy, will oppose the amendment.

Amendment negatived.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.06): I move amendment No 1 circulated in my name on the white paper *[see schedule 3 at page 1914]*.

Item 1 substitutes a new subsection 60K (2). The new subsection 60K (2) allows the court to order a person convicted or found guilty of a land clearing offence to pay to the territory the cost of restoration of the damage caused and monitoring of the outcomes. This order would be sought where it was considered inappropriate for the offender to be required to do the restoration themselves due to their competence to carry it out or the sensitivity of the area.

This amendment is designed simply to ensure that people who are inappropriately qualified do not, rather than pay an award of damages, attempt to restore areas of natural value themselves, and it is designed simply to protect an area of land that might otherwise have been degraded.

MS DUNDAS (10.07): Just briefly: I understand that this amendment extends the ability of a court to order that an offender against the provisions of the bill must pay the costs of any restoration work on the damaged area conducted by the ACT government. This is a sensible extension of the court's discretion, and the Democrats support this amendment. I will foreshadow that Mr Stanhope's second amendment that also addresses a similar issue is one that we support.

MRS DUNNE (10.08): The Liberal opposition will be supporting this amendment and, I foreshadow, will be supporting his amendment No 2 as well. These are sensible provisions that extend the powers of the courts from imposing fines and are in many ways similar, in spirit at least, to the new provisions in the compliance legislation in the land act. They give a sort of an extra arrow in the quiver of the courts and the conservation authorities to ensure that remedial works are done, that they are done by appropriately qualified people and, in ensuring that that has happened, the territory is not out of pocket for negligence. We support the amendment.

Amendment agreed to.

MS DUNDAS (10.09): I seek leave to move amendments Nos 4 to 6 circulated in my name together.

Leave granted.

MS DUNDAS: I move amendments Nos 4 to 6 circulated in my name together. They are on the green piece of paper *[see schedule 1 at page 1912]*.

These amendments are very similar to the amendments that I moved earlier this evening. They address the issue of due diligence and insert a defence of taking reasonable steps when we are dealing with these penalties. I commend them to the Assembly.

Amendments agreed to.

MS TUCKER (10.11): I seek leave to move amendments Nos 4 to 6 circulated in my name together.

Leave granted.

MS TUCKER: I move amendments Nos 4 to 6 circulated in my name together *[see schedule 2 at page 1913]*.

These are the same as our earlier set of three, but I will not speak to these amendments again except to make it clear that clause 60R mirrors 601. Hence, so do my amendments.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.11): As Ms Tucker says, amendments 4, 5 and 6 are essentially the same as amendments 1, 2 and 3. The government agreed to amendment 1 and will agree to No 4. We will oppose Nos 5 and 6, for the same reasons as we opposed Nos 2 and 3.

Ordered that the amendments be divided.

Question put:

> That amendment No 4 be agreed to.

MS DUNDAS (10.12): I reiterate that we think Ms Tucker has made a very good argument that plans should not automatically give people the right to clear native vegetation. We foreshadow again our support not only for amendment No 4 but also for amendments Nos 5 and 6.

Question resolved in the affirmative.

Question put:

> That amendment No 5 be agreed to.

Question resolved in the negative.

Question put:

That amendment No 6 be agreed to.

Question resolved in the negative.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.14): I move amendment No 2 circulated in my name and table a supplementary explanatory statement to the amendments *[see schedule 3 at page 1914]*.

Mr Speaker, item 2 substitutes new subsection 60T (2). This has the same effect as that proposed by amendment No 1, which I moved previously in relation to the offence of causing damage to land, that is, that a person convicted or found guilty of a damage to land offence can be required to pay the territory the cost of restoration of the damage caused and monitoring of the outcomes. The order would be sought where it is considered inappropriate for the offender to be required to do the restoration themselves due to their competence to carry it out or the sensitivity of the area. It is the same rationale as for the amendment I moved previously. It is a fairly straightforward matter, designed to ensure that the values of the land that have been damaged are protected with the greatest defence possible.

Amendment agreed to.

Clause 7, as amended, agreed to.

Clause 8 agreed to.

Proposed new clauses 8A, 8B and 8C.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.16): I move amendment No 1 circulated in my name on the blue paper *[see schedule 4 at page 1915]*.

These amendments have been much consulted on. We have sought to achieve some consensus on an amendment that will facilitate the building of the Gungahlin Drive extension. The government has compromised on the motion that was circulated last week to a very significant extent and has taken advice in respect of the views of other members of the Assembly in relation to the need for an amendment of this order to be directed just at the Gungahlin Drive extension. We believe that we have achieved that through these amendments.

The amendments are directed at facilitating the building of the GDE. The effect will be to allow the Minister for Environment to declare certain licensing decisions of the conservator to be exempt from appeal to the AAT. Only a decision to grant a licence, grant a licence with conditions or vary a licence will be subject to such a declaration. It will not interfere with appeal rights against a decision to refuse a licence under the Nature Conservation Act 1980. This will be done in cases like the Gungahlin Drive extension, where the environmental issues have been considered and addressed and there is no need for further second-guessing of the decision of the conservator.

The conservator has exercised her discretion on licences in relation to licences for the current contractor on the GDE and has decided that the criteria for grant of the relevant licences have been met. A declaration under these provisions will be made to ensure that the AAT appeal against the decision cannot proceed. For future contractors the conservator will still need to be convinced that the grant of licence is in accordance with the criteria determined under the act, so the minister will not be able to control whether the licence is issued but only whether it can be subject to appeal.

It is vitally important that work recommence on the Gungahlin Drive extension. I believe that is the majority, if not almost the consensus, view of members of this Assembly. These amendments are necessary if work is to recommence without significant delay on the Gungahlin Drive extension. I cannot state too strongly the importance to the recommencement of construction on the Gungahlin Drive extension of the passage of these amendments, and I commend them to members.

MR WOOD (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for Police and Emergency Services, and Minister for Arts and Heritage) (10.18): I support Mr Stanhope on these crucial amendments. A large number of members of this Assembly were at Gungahlin last weekend; I can see the faces here of many who were out there. It is beyond any doubt that the intention of that meeting was for the road to go ahead.

The view that was very solidly expressed to the half dozen or more members who were at that meeting was that the road should go ahead. It will go ahead. Of that there is ultimately no doubt. We need to move it ahead with due speed and with due respect of our laws, and I believe that is happening. This amendment allows that the declaration is a disallowable instrument—a significant improvement, if you like to put it that way.

This will work. Mr Stanhope made the point that licences are issued and considerations are given. This stops the appeals that are deliberately frustrating the work that has been long planned and exhaustively considered. As representatives of all those people who were at Gungahlin, and a great number more than that around this place, we should see that this needs to go ahead so that we can move with it.

Other proposals are floating around the chamber tonight, but this has been around for quite long enough. The message that we got is absolutely clear: an overwhelming number of people in this place concede—firmly agree—that the road should proceed and should proceed without any more costly, frustrating delays.

MS DUNDAS (10.21): The Democrats will not be supporting this amendment or the government's other amendment that has been circulated, which remove the ability of the judiciary, in this case the Administrative Appeals Tribunal, to scrutinise the activities of government. This amendment continues with the government's objective of trampling on the oversight of the courts and removing the appeal rights of Canberra citizens.

The argument that we put forward during the debate on the land planning environment regulation fits here as well. The ACT Democrats do not condone the removal of Canberrans' rights to access the justice system. The government has this evening circulated two measures to try and fix the impasse that they see. The main difference

between these two measures is that the first one allows the government to prevent an appeal to the AAT in the case of any licence issued by the conservator, and the second version allows this to occur only for licences related to the construction of the Gungahlin Drive extension.

The fact that the government prepared a back-up amendment simply demonstrates that they were aware of the disquiet and concern that surround this move to corrupt the Nature Conservation Act. In fact, these are just two amendments among many others. Many options have been circulating among members, in order to try and get this change through the Assembly in whichever form the government can.

We have already seen the government put through new regulations for the Land Planning Environment Act today. However, at the very least those amendments were to an act that already had a means of calling in developments to prevent them going before judicial review. However, there has never been any such provision in the Nature Conservation Act or the Environment Protection Act.

These amendments will result in a significant dent in our environment protection laws, and by moving these amendments the government have demonstrated that they believe the integrity of environmental laws and their enforcement by the judiciary are expendable. This move reduces any confidence the people of Canberra had in the Labor government's commitment to environmental protection because it appears the government are willing to overturn those laws at the first opportunity, after they present a problem.

I have already spoken this evening about protecting the separation of powers between the executive and judiciary. I will not bore members by making those statements again, but they are equally relevant here. I restate that the Democrats reject any attempt to remove the authority of the judiciary and hand those powers to the ACT executive.

This is not about whether the Gungahlin Drive extension will be built today, tomorrow or in six weeks time—or not. These amendments go more broadly than that in the erosion of citizens' rights. It is not about whether or not you support the road; it is about whether or not you support good law and good decision making. This bill was supposed to reduce the incidence of land clearing; there are now last-minute amendments that attempt to use it to wind back our environmental laws. The Democrats cannot support those moves.

MRS DUNNE (10.24): The Liberal opposition will be opposing the amendment moved by the minister and the one foreshadowed on the buff page as well, not exactly for the same reasons put forward by Ms Dundas. While we in the Liberal opposition generally agree that there is a role for third party appeals, we are not so wedded to the concept that we do not see that there are times when we can afford to cast them aside. We do not think that they are an inalienable right and that they occur on all occasions. When we talk about third party appeals, we are mostly talking about the impact on neighbours, and the Liberal opposition would never seriously take away those rights to people's domestic amenity.

This is about what goes on on reserved and unleased land, and it is not to the same extent that we have this reservation. However, the reservation that we have here comes in many forms. The Nature Conservation Act does not have a regime of exemptions that override

appeal rights, as the land act does. In the land act there are a whole range of things that curtail people's rights to appeal.

MR SPEAKER: Order! There is too much audible conversation going on.

MRS DUNNE: Under the land act, for instance, the minister can call in powers. That is clearly set out in legislation, and it has a precedent of very long standing. There are also a range of regulations that specify certain things that are exempt from third party appeals, like building a road—although some people have not quite grasped that yet. In the Nature Conservation Act there is no regime for exemptions, and to install this amendment in either form establishes, without any real discussion about the principle of that, a regime of exemptions. If we pass the blue amendment, it is a broad-brush exemption. If we pass the yellowy, buff one, it is a very specific and limited one. You might think, "What's the problem with that?"

What it boils down to is this: "It's a fine mess you got us into here, Ollie." The government messed up. The government did not do its homework. The government did not take all the hints. The government did not think about how it would get things through; it just stood around and hoped that everything would be all right. What happened was that it was not all right. It did not plan for the worst-case scenario. When I said to government members, "Why don't you come up with enabling legislation?" they said, "No, no, no. You can't do that. End of civilisation as we know it."

Here we are confronted with a bandaid, and it is an increasingly ludicrous bandaid because the government has now moved from being opposed to enabling legislation to foreshadowing that, presumably tomorrow, they will introduce their own. What will actually happen is that we are going to pass bad legislation to fill a two-week gap, or a four-week gap at most.

On the government's own admission these amendments will become superfluous as soon as the enabling legislation is passed. It has been put to members here tonight that if we are so concerned about it, when we pass the enabling legislation—of whichever colour, because surely one of them will pass; or there will be a compromise between the two—we can at the same time pass an amendment to take out this amendment that the government proposes to make tonight.

I have never heard a more ludicrous proposal. This is bad law. It is bandaid law. As somebody said here tonight, "The open-heart surgery is coming next week or the next time we sit, or whenever." So let's not put a bandaid on the scar when we are going to pull it all apart, fix it and put it back.

If the government is so concerned about the timing, I and my colleagues are quite prepared to make time tomorrow to debate the Projects of Territorial Significance Bill, which was introduced here only today but has been circulated amongst members for two weeks in various forms. The final form was circulated to members last Thursday; it has been out there.

The government says, "You're holding up the GDE." The Liberal opposition is not prepared to hold up the GDE—

Mr Stanhope: You are. That's what you're doing.

MRS DUNNE: At the same time we are not prepared, for the sake of two weeks, when for two years and four months you people have been—

Mr Stanhope: Another quarter of a million dollars, another six weeks. Did you go to Gungahlin on the weekend, you hypocrite?

MR SPEAKER: Order!

MRS DUNNE: Pardon?

Mr Stanhope: Did you make a speech out there about how you wanted this to go ahead?

MR SPEAKER: Order! I think you should withdraw that.

Mr Stanhope: I withdraw "hypocrite".

MRS DUNNE: The Liberal opposition has been in favour of building this road and has never wavered from its commitment to building this road. While members of this Assembly have flip-flopped around the place and have stood in the way of building this road for a very long time, the Liberal opposition has held firm. If the Chief Minister had gone to Gungahlin last Saturday, which he did not, he would have heard the very clear message that we will hold firm and that our commitment was to introduce the territorial significance legislation, which will get us through this mire—a mire created by this government in its incompetence.

While we are committed to building this road, we will not be party to the incompetent, on-the-run law making that we have seen in this place tonight. By the time we get to the buff paper, it will be amendment mark 5, and members are getting concerned because the government is in such disarray. While we want the road to go ahead, passing this now means getting the road under way in two to four weeks. Passing enabling legislation on 21 June means getting the road under way two to four weeks after that. That is the difference. On the government's own admission, by 21 June these amendments will be superfluous. In addition, we will not support bad, bandaid legislation for the sake of two weeks when this government has stood in the way of the road since October 2001.

Suddenly they are righteous. Suddenly they are committed because they are feeling the electors breathing down their necks. They know they are losing votes in Gungahlin because they have been constitutionally and serially incompetent and dishonest and have misled the people of Gungahlin for years and years.

Mr Stanhope: No, you are—holding it up again. Everybody knows who held this up. You did. You've held this road up from the start.

MR SPEAKER: Order!

MR CORBELL (Minister for Health and Minister for Planning) (10.32): Mr Speaker, it is striking that we hear from the spokesperson for the Liberal party on planning about

how committed they are to building this road and investing in this important public infrastructure. They are so committed to getting on with it right now, as Mr Smyth said to Gungahlin residents last Saturday, that they are prepared to block these amendments tonight, amendments which would allow this work to recommence next week.

That is the proposition that Mrs Dunne and her colleagues will have to explain to the community of Canberra when this government lets people know the outcome of the vote tonight, if that is what occurs. The Liberal party, when presented with a proposition it fundamentally does not disagree with, blocks it so that its legislation can get dealt with first. That is all this is about—nothing more and nothing less. Right now a proposition is on the table for members to debate that will allow the work to recommence next week. Now it is time for the Liberal party to put its money where its mouth is and not seek to manoeuvre politically so that its legislation, rather than the legislation already before this place, is seen as the saving one.

What is wrong with legislation that permits a project to proceed in a way that has been heavily scrutinised and agreed to by this place on frequent and successive occasions? We have all known that the development of this infrastructure will go through an area of Canberra Nature Park. That is no surprise to anyone. Obviously, building a piece of infrastructure within Canberra Nature Park will have some impact on that environment.

These amendments make clear what authorisation is, or is not, required for that work to occur in relation to this specific project. Mrs Dunne is suggesting that we use this project to get Assembly support for enabling legislation that allows any infrastructure project or development application in this city to be determined as a project of territorial significance, overriding other usual requirements of the land act and of other planning approaches.

Mrs Dunne is saying, "We might have a problem with Gungahlin Drive now, but what a great opportunity to open the doors wide to a whole heap of other projects that, potentially, we can allow to go through without a level of scrutiny." That is wrong in my view. That is fundamentally wrong. The government's approach has been to say, "We know that successive assemblies and successive governments have, by overwhelming majority, agreed that this project should proceed. It has satisfied all of the requirements of the territory plan, preliminary assessments and the National Capital Plan and should therefore proceed." That is what we are putting forward in the legislation today.

But Mrs Dunne is saying, "This is a great opportunity to open the doors and allow a piece of legislation to be presented in this place that not only deals with the Gungahlin Drive extension but also potentially opens up to any project that the minister of the day determines to be significant a process that is not subject to the normal requirements of the land act." That is the contrast between government and opposition. We say that the Gungahlin Drive project specifically should be facilitated—

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

MR CORBELL: and we say that it is this project only which should be dealt with in this manner, because of the consistent and well-expressed view of a majority of members of past and previous governments that this project should proceed.

Ms Dundas: Mr Speaker, I have a point of order. We are dealing specifically with the amendment moved by the minister on the blue sheet; we are not debating legislation that was tabled earlier this afternoon. I need your ruling on this, but I feel that Mr Corbell is pre-empting debate on an order of the day.

Mr Quinlan: Aren't we smart to think about it, though?

Ms Dundas: I'm asking for clarification.

MR SPEAKER: Order, Mr Quinlan! Order, members! Could you run through that again, please, Ms Dundas?

Ms Dundas: Mr Speaker, I seek your guidance. I get the impression that Mr Corbell .is debating something else entirely—an order of the day that was tabled today—when we are actually trying to debate this amendment as moved on the blue, which does not refer to Gungahlin Drive or to the territorial significance legislation that Mrs Dunne tabled this afternoon.

MR CORBELL: On the point of order, Mr Speaker, I am responding to the debating point Mrs Dunne raised in her opposition to this, when she said, "Don't pass this amendment; pass my bill instead." I am responding to that point in the debate, and I think it is legitimate to do so.

MR SPEAKER: Yes, I agree with you.

Ms Dundas: Okay. I was seeking clarification.

MR CORBELL: That is the difference that members must bear in mind in this place. Either you can deal with Gungahlin Drive specifically through this amendment, or you can accept Mrs Dunne's argument: let's not deal with Gungahlin Drive specifically; let's just pass her legislation, which opens up a whole range of potential developments to fast tracking.

The government does not think that is appropriate. We think it is appropriate to facilitate the construction of this project, but we do not accept that there is an argument to establish legislation that grants the same passage to all sorts of potential developments. That is why we should support this amendment this evening. If it is not supported it will result in the project being further delayed for a significant period of time. Those opposite, and other members who do not support it, will have to justify their position.

The government will say very clearly, "We put the amendments on the table that would have facilitated recommencement of this work, and it was blocked by the Liberal party." It is a pretty simple message to get out there, and it is the truth. It highlights the fact that the Liberal party is not interested in facilitating this project, despite all its protestations; it is just interested in scoring the political point. Well, we will get on with the job of trying to facilitate this project. I just wish that that rally at Gungahlin were going to be next weekend rather than having been on last weekend, because Mrs Dunne and her colleagues would get a very different reception.

MS TUCKER (10.42): It seems we are speaking to the amendment on the blue paper and on the sand-coloured paper, so I will do the same thing. Mr Corbell has just been claiming that this is specifically about the Gungahlin Drive extension but, obviously, the amendment on the blue is not. It does not mention the Gungahlin Drive extension at all. It introduces to our nature protection laws a situation where appeal rights—which Simon Corbell fiercely defended when in opposition and Labor's election policy also fiercely defended—will be taken away from people in the ACT community.

This amendment on the blue does not specifically address the Gungahlin Drive extension. It once again shows how the government is prepared to fundamentally override the checks and balances we thought we had in the ACT. It attacks our democratic system in the ACT and it is a very concerning initiative from Simon Corbell, whom I remember standing on that side of the house telling people in the Canberra community that he would fiercely defend their rights of appeal.

The second option, on the buff-coloured paper, is a narrow version of the first, in that call-in—that is, the removal of scrutiny via appeal to the AAT—is restricted to works on the GDE. This amendment still creates an exemption of scrutiny within the Nature Conservation Act where none existed before, and I say that this is a dangerous path for a short-term gain—that is, a gain as seen by the government but a loss in our view. We take nature protection laws very seriously, and we will not be supporting either of these amendments.

Debate interrupted.

Suspension of standing order 76

MRS CROSS (10.44): I move:

> That standing order 76 be suspended for the remainder of this sitting.

Given that this debate is still going, and there's an 11 o'clock rule that nothing can be done after 11 o'clock, I will need to seek leave to speak on Cyprus, the motion that I originally had on the notice paper.

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

Environment Legislation Amendment Bill 2004
Detail stage

Proposed new clauses 8A, 8B and 8C.

Debate resumed.

MR CORBELL (Minister for Health and Minister for Planning) (10.46): I want to address some of the misrepresentations made by Ms Tucker in this debate. First of all, she says that the removal of these appeal rights, as outlined in the amendment on the blue paper, is in some way an arbitrary act by the government that is not subject to any review—she said "a lack of checks and balances". Ms Tucker, the declaration by the

minister that a particular decision is not subject to review by the AAT is a disallowable instrument.

Ms Tucker: So that's all right then? Why do we bother having an AAT? Let's get rid of the AAT altogether.

MR CORBELL: I would have thought that the executive and the legislature were a check and balance on the power of the executive. It is a pretty reasonable argument; we have heard it quite often from Ms Tucker. In fact, I hear all the time from Ms Tucker that issues should be subject to disallowance in this place. But when the argument does not suit her and it is disallowable, all of a sudden it is an erosion of rights. But I hear from Ms Tucker all the time that this should be disallowable and that should be disallowable. She wants the call-in power to be disallowable. But when this one is disallowable, no, it is an erosion of rights. It is a contradictory and hypocritical position. This is a disallowable instrument—

Ms Tucker: You're not convincing anybody in the community. Why don't you put up a proposal to get rid of the AAT?

MR SPEAKER: Order, Ms Tucker!

MR CORBELL: Ms Tucker also made the implication in this place that in some way—

Ms Tucker: I'll look forward to that proposal. You might as well.

MR SPEAKER: Order, Ms Tucker! Contain yourself!

MR CORBELL: my position was contradictory to the position I put forward on behalf of the Labor party before the last election. I can assure Ms Tucker that in no way is it.

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

MR CORBELL: If Ms Tucker had half the wit to look carefully at the policy the Labor party took to the last election, she would also know that the Labor party had articulated that third party appeal rights should be restricted to those people who are immediately and directly affected by a decision. It is there in black and white, Ms Tucker, so just go back and have a look. Go back and have a look at the policy, which is very clear.

MR SPEAKER: Mr Corbell, direct your comments through the chair. Ms Tucker, contain yourself!

MR CORBELL: The Labor party's policy before the last election made it very clear that third party appeal rights should be available to those who are immediately and directly affected by a decision, and that is a reasonable position. In the debate tonight we heard Ms Tucker's view that there should be open standing. Open standing is not consistent with the position that appeal rights should be available to those people immediately and directly affected by the decision.

So the position, Ms Tucker, that you put and the position that the government put and the position the government took to the last election, which was endorsed by the people of

Canberra at the last election, is that appeal rights should be restricted to those people who are immediately and directly affected by a decision. That is in the policy. I know it does not suit your rhetoric that that was in the policy, but that is what was in the policy, Ms Tucker. So next time, before you make a wide, sweeping allegation such as you made, check your facts. I wrote that policy. I know what was in that policy, and I can assure you that the position of open standing was not in that policy.

The proposition before the Assembly is that, in relation to a specific project, the minister can determine that certain decisions are not open to review, subject to the scrutiny of this place. It can be refused or vetoed by this place through a disallowable instrument. I would have thought that that was exactly the sort of thing the Greens would expect in terms of the legislature keeping a check on the power of the executive.

MRS DUNNE (10.50): I will comment on some of the things said by Mr Corbell in both of his rants. Mr Corbell, of course, comes late into this debate. He was not here and did not participate in the debate last Tuesday, when we thrashed out the problem of what is wrong with a disallowable instrument in this case. It is really a matter of chronology.

For instance, next Monday, if this blue piece of legislation were to come into effect, the conservator could issue a licence approved by the Minister for Environment by virtue of disallowable instrument. Because we do not sit for another four or five weeks, that disallowable instrument would not come into this Assembly until mid to late June, by which time the destructive activity could already have taken place. It is a matter of chronology.

For instance, the conservator and the Minister for Environment could make these determinations and issue these disallowable instruments in the last week of December, and we do not come back till February. The destructive activity could have taken place already, and there is no check and balance.

Ms Tucker: What?

MRS DUNNE: Yes, there is a check and balance but, because of the chronology and the timing with which we sit, a whole lot of activities could already have taken place and we would be disallowing something, if we saw the need to, that had already taken place. This is the difference between this proposal and what Ms Tucker is talking about—what is currently here.

The reason why the Liberal opposition does not want to take out these provisions and create exemption provisions for third party appeals in this legislation is that in the Nature Conservation Act, since it was passed in 1980 until now, there have not been exemptions for third party appeals. This is a fundamental and in-principle change to this legislation, and you do not do it at 11 o'clock at night when there has not been—

Mr Hargreaves: It could've been 11 o'clock this morning if it hadn't been for that other nonsense.

MRS DUNNE: Well, it could have been 11 o'clock this morning and there still would not have been discussion in the community about the nature of the bill. This changes the

entire nature of this piece of legislation by stealth without community consultation. I have made the offer, and the Liberal opposition makes the offer, that we will pass enabling legislation. We do not care whose enabling legislation it is, as long as it is good law. This is bad law, and we will not support it. I do not care whose enabling legislation it is. My ego is not as big as Mr Corbell's or Mr Stanhope's. It would have to be damned big to be that big. I do not care. I have made a commitment to the people of Gungahlin that they will get their road, which could have commenced on 1 July 2002—

Mr Stanhope: If you hadn't stopped them.

MRS DUNNE: No, if you hadn't stopped them! If you hadn't gone to the election with Simon Corbell's lie, you would not have been able to do this.

Mr Hargreaves: I have a point of order, Mr Speaker. I ask to have the word "lie" withdrawn. Ms Dunne just accused Mr Corbell of a lie, and she should withdraw it.

MRS DUNNE: I withdraw it. If the Labor party had not misrepresented their position to the electorate, we would not be in this situation now.

MR SPEAKER: Order! Mrs Dunne has the floor.

MRS DUNNE: The Labor party went to the previous election with a commitment that they could not keep. We told them then; we told them consistently. We have not wavered from that position. Their commitment could not be kept. They knew it and they deceived the people of Canberra because they withheld the facts, as with many things the government does—just as Mr Corbell was talking about here. He will attempt to blackmail us by going out tomorrow and telling—

Mr Hargreaves: I rise on a point of order, Mr Speaker. Suggestions that the minister would try to blackmail members of this place are grossly unparliamentary.

MRS DUNNE: Okay. I will withdraw "blackmail". I will just describe it and people can give it the noun they choose.

Mr Hargreaves: Mr Speaker, on a point of order, it's a qualified withdrawal and I object to it.

MRS DUNNE: I have withdrawn the word "blackmail". Mr Corbell and Mr Stanhope have said that they will go out tomorrow and put out a press release that tells part of the story. Yes, if we oppose this tonight—which we will—it is strictly true that the road will not go ahead next week. That is strictly true. We are talking about real Jesuitical casuistry here. They are actually trying to make us cower because they think we cannot hold our heads up high. We can hold our heads up high because we have been constant. We have not wavered, while you have flip-flopped all over the way and got this place into an almighty mess. Now you want to blame somebody else.

They have wasted the time, money, effort and energy of countless people in this community for years over this. Mr Corbell, when he was in opposition, thought that he could make political mileage out of it, and it has come back and blown up in their face. He thinks he went to Gungahlin the other day and was greeted like a conquering hero.

The trouble is that Mr Corbell was up on the podium; he was not down there talking to the people. I chose not to speak at that rally because it was a community rally where people should be speaking, not politicians.

Mr Stanhope: Not Brendan Smyth or Bill Stefaniak?

MRS DUNNE: Brendan Smyth and Bill Stefaniak were representing the Liberal party. We did not want 1,000 politicians there. We wanted people telling their story, and their message was loud and clear. They had been dudded by Simon Corbell; they had been dudded by Jon Stanhope; they had been dudded by Labor.

Mr Stanhope: You wait until tomorrow. Then we'll see who's been dudded!

MRS DUNNE: One press release, Mr Stanhope, will not improve your credibility in this town. One press release will not do it. I am sorry. I have to do it because it so nicely matches his tie. I knew this would happen tonight as soon as the opposition said they would not support it. We have had a major Jon Stanhope dummy spit and a reverse pike from Simon Corbell. They have been sitting here saying, "We are the government. We can have our way. We don't care how bad the law is. We will have our way and, if we can't have our way, we will threaten you with the public."

All through Mr Corbell's homily about how virtuous he was being, Mr Stanhope spent his time peddling mistruths about what is in a piece of legislation that he should have read. If he had read it, he would know that what he said was untrue.

Mrs Burke: But he says he does not read everything. He admits that.

MRS DUNNE: That's right! He doesn't read things. He forgot—or maybe he forgot that he read it. But he was there saying that there were a whole range of things in our proposed legislation which are not there.

Mr Stanhope: Precisely. No appeals to the AAT. No appeals to anything.

MRS DUNNE: Let's not get all precious about the AAT. You want to take away appeal rights in appropriate circumstances; we want to take away appeal rights in appropriate circumstances. So we could actually get together and work out what the best circumstances are, except you suffer too much from hubris, Mr Chief Minister.

Mr Stanhope: Let's build without preparing any assessments!

MR SPEAKER: Order, Mr Stanhope! Mrs—

MRS DUNNE: Mr Speaker, this is entirely about hubris. This is about the environment minister wanting to get his own way. He has had a bad day—aah. It has been crook. But everyone else has had a hard day too. He has had a bad day and he wants to get a win out of something. But I am sorry: this is not it. This is bad legislation. No matter how important the GDE is, it can wait two more weeks—after you have stuffed people around for 2½ years.

MS TUCKER (11.00): Just very briefly because I realise I was interjecting: I apologise; I do not usually do that.

MR SPEAKER: Thank you so much.

MS TUCKER: I really did find that I was provoked by Mr Corbell. The fact that he would dare stand in this place and suggest that a disallowance was the same protection as an AAT hearing, that he can somehow try to argue in this place that because something is disallowable we do not have a problem in terms of scrutiny and checks and basic rights of people in the ACT, just had to be commented on.

MR SMYTH (Leader of the Opposition) (11.00): Mr Speaker, I was watching upstairs and was quite amazed to see Mr Corbell rise to his hind legs, and there he was saying, "I would not blame the Liberals for slowing down the GDE." I just closed my eyes—deja vu; here we go. This project was meant to start on 1 July 2002. I can recall this because I was the minister who put it in there in our five-year road program, and it was delayed. Mr Corbell dragged this process as slowly as he could; he retarded its progress through the former Planning and Environment Committee because it suited his political purposes. That is all it was.

I can remember him standing somewhere just about here and attacking Mr Rugendyke and Mr Hird when they said they would not go out for another round of public consultation so that Simon Corbell could slow it down one more time. I see he has abandoned the chamber; he has raced up there; he is tap, tap, tapping away at his computer, no doubt putting out the press release saying "Liberals block GDE".

Well, in the morning I will give Mr Corbell the chance he wants to progress the GDE immediately. We will seek leave in the morning to bring on our bill entitled Projects of Territorial Significance Bill, which is a better piece of legislation. Do not take my word for it; Mr Wood said so. Mr Wood said, "This is better than ours because (1) it is finished and (2) we were not thinking that way."

This is the government of bandaids and patch jobs; they are coming at this from behind because they do not know what to do, they have slowed it down for more than two years. They have not thought about an adequate solution; they are patching piece after piece after piece of legislation because they do not have coherence; they cannot put this stuff together. Then, when somebody has the temerity to say, "Well, we've got a better way than the government, what about this?" they say, "How dare you? We're the government, you, you, you cannot do that to us." Well, we will.

In the morning we will seek leave to bring on immediately our bill entitled Projects of Territorial Significance Bill, a bill which was circulated as a courtesy, unlike most of the government amendments, what—a week ago, ten days ago?

Mrs Burke: Two weeks; final last week.

MR SMYTH: Two weeks.

Mrs Dunne: Two weeks ago.

MR SMYTH: Two weeks ago, I am told by Mrs Dunne; so members have had it for approximately two weeks. It is a neat little bill; it is a good little bill. Indeed, many community groups have come to us and said, "We like your solution because you've obviously thought about it, and what it presents is a coherent way forward."

So Mr Corbell, if you are upstairs listening and you are tap, tap, tapping away at your computer and getting that press release out slagging the Liberals because they are going to slag at you there, just put in a paragraph at the end on whether or not you will support bringing on the Projects of Territorial Significance Bill in the morning. If you do not, then you are a hypocrite. And it is as simple as that.

So there is the deal. We can actually give you a better solution, with a coherent bill, first cab off the rank in the morning and we will see whether or not the Labor Party is really sincere about putting GDE through. The reality is they are not, and they have been looking for an excuse to blame somebody else. Well, they will have their chance in the morning.

Our bill is far more comprehensive; our bill is far more coherent; our bill will give people certainty; and, most importantly, our bill is finished and on the table. So there it is; there is the offer; there is the deal. You do not get your steak knives, but, Mr Corbell, Mr Wood, Mr Stanhope, what you will get is the opportunity to build a road ending the farce that you have created, the absolute farce that you and your government have created, by your inability to get this project because you are the government of delay. You cannot get this project under way simply because you have not really thought about how to do it.

So we will see in the morning who is really sincere about getting GDE under way. The opportunity is there. We will stand and ask for leave. Mrs Dunne will ask for leave to bring her bill on, and then we will see who is stopping Gungahlin Drive.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.08): I move amendment No 1 circulated in my

name on the sand coloured paper which inserts new clauses 8A, 8B and 8C *[see schedule 5 at page 1916]* .

This amendment, which is similar to the amendment just defeated, is directed towards facilitating the building of the Gungahlin Drive extension. The effect of this amendment is to allow the Minister for Environment to declare certain licensing decisions of the conservator to be about conduct related to the Gungahlin Drive extension. If the minister makes such a declaration, then the decision will be exempt from appeal to the AAT. Only a decision to grant a licence with conditions to vary a licence would be subject to such a declaration, and it does not interfere with appeal rights against the decision to refuse a licence under the Nature Conservation Act of 1980. This will allow a declaration to be made about licences for the work on the Gungahlin Drive extension.

As I have previously stated in that matter, the environmental issues have been considered and addressed and there is no need for there to be further second-guessing of the decision of the conservator. The conservator has exercised her discretion on licences in relation to licences for the current contractors and has decided that the criteria for grant of the relevant licences have been met. A declaration under these provisions will be made to ensure the AAT appeal against that decision cannot proceed. For future contractors, the conservator will need to be convinced that the grant of a licence is appropriate in accordance with the criteria determined under the act, so the minister will not be able to control whether the licence is issued but only whether it can be subject to appeal.

I certainly commend this amendment to the Assembly. This amendment is Gungahlin Drive extension specific; this amendment will allow the Gungahlin Drive extension to proceed; this amendment does not create some of the concerns that have been addressed by members in the debate on the proposals included on the blue sheet just debated and just defeated.

These new clauses have been crafted as a consequence of comments received by the government from members in relation to their concerns about the amendments that the government has proposed in relation to this issue to allow us to proceed with the construction of the Gungahlin Drive extension; they are narrow; they are specific; they are Gungahlin Drive related; they are a minimalist approach to allow us to achieve a community purpose, a very significant community purpose.

We do not need to go over the debate. I do not believe there is a single, cogent, rational argument that anybody that pretends or purports to support the Gungahlin Drive extension proceeding can utilise against this set of amendments. Any attempt to argue down this particular set of amendments is quite spurious and will lead to a range of other consequences that are far broader, far greater in their consequences for future planning regimes, than the acceptance of this set of amendments.

I think it needs to be said, it needs to be understood, this is the minimalist position. The government is determined to build this road, and we will build it. And if we do have to accept, tomorrow, the legislation introduced by the shadow minister, then we will.

MS DUNDAS (11.11): Mr Speaker, I seek your guidance. Is this amendment actually to or within the scope of the bill? I will put an argument forward. Because it is specific to one particular capital work in the budget, when this is broader environmental amendment

legislation, I question whether or not it is actually within the scope of the bill and whether it also deals with sections that are not dealt with in the main bill. So again, I raise questions about whether or not it is actually within the scope of the bill that we are debating.

MR SPEAKER: Having examined the matter, I take the view that it is within the scope of the bill. It is open to the house as to how it deals with the matter in the end anyway, but, after discussions with the clerk, I form the view that it is within the scope of the bill and I am prepared to allow it.

MS DUNDAS: Then to discuss this amendment: This amendment is a continuation of the government working to restrict citizens' rights. The championing of human rights that this government proposes is being continually stripped away by the amendments they are seeking to move to legislation before the Human Rights Bill is enabled.

I reject the Chief Minister's threat that we have got either this piece of bad law or another piece of bad law tomorrow. We cannot accept this as an amendment to this bill, because it is just purely and simply bad law that restricts citizens' rights. We will look at every amendment and every piece of legislation that comes to this Assembly separately, and you cannot make the threat that it is either this bad law or another bad law. We will consider each separately, and that is how we will make those decisions.

I understand that the government itself is preparing its own enabling legislation, and we will consider that. That is what needs to be done. It does not need this kind of slap-it-on answer that restricts the rights of citizens of the ACT, and that is why again I say, specifically outside the scope of whether or not you support the Gungahlin Drive extension, "Do you support bad law coming into play to justify that?" I do not.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.15): I must say I am frustrated, but I see the will of the Assembly. The will of the Assembly is to obstruct the construction of the Gungahlin Drive extension; there is absolutely no commitment to seeing it proceed. And so be it.

As I indicated, the government will look closely at the Projects of Territorial Significance Bill. I have received some preliminary advice which points out some rather major and drastic issues with it, some very significant problems, but it may be that we can iron them out, deal with them, exclude the most draconian of them and come up with a workable piece of legislation. It probably cannot be done by tomorrow.

I think it does mean that the Gungahlin Drive extension construction is put off by—what?—another six weeks or thereabouts, another $400,000 or $500,000, another period of very significant delay for the people of Gungahlin. I must say we did what we could. We will have a look, but I would say, at this stage, that, having regard to the significant issues with the bill that the opposition tabled today, it is probably not in an order that we can grasp immediately. But we will have a look and see how much damage there is to be undone and whether or not we can proceed.

But I must say: I do regret the fact that there is no support within the Assembly for the construction of the Gungahlin Drive extension. I regret that there is no support within the Assembly for the minimalist approach reflected on the sand coloured sheet. It is the

minimalist approach. There really is no further winding back of proposals in relation to this particular issue that could be achieved. To talk about it as bad law is just so trite and effectively so ignorant of exactly what it is that we are seeking to achieve—so amazingly trite. It would have achieved the purpose, it would have achieved it in a minimalist way with the least disruption. I have to say: we tried our best.

MR WOOD (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for Police and Emergency Services, and Minister for Arts and Heritage) (11.18): I rise to speak on this amendment, and in doing so would correct Mr Smyth who said earlier that I thought that Mrs Dunne's bill was a good bill. I never said any such thing.

Mr Smyth: You said it across the chamber.

MR WOOD: No, Mr Smyth, I certainly not. The lack of logic from Ms Dundas and some others just surprises me. They would not pass these modest things, which do take away some of the aspects of appeals to the AAT, yes, but they looked with approval at Mrs Dunne's bill that takes away all rights. It takes away all the rights. So Ms Dundas at another time can explain that twist of logic that misses me altogether. It just does not sort of factor with me.

MRS DUNNE (11.19): I think the reasons why this amendment cannot be supported have already been said, but I thought the knock-down, drag-out argument for why we should support it was the Chief Minister's "this is a minimalist approach". Remember the minimalist republic? Yes, what happened to it? Again, when you compare things back to what we absolutely die in a ditch over, we usually get it wrong.

One of the things that have not been said here tonight and need to be reinforced is that members of the government are here saying that, if we passed either of these amendments tonight, we could go out tomorrow and start the GDE. Wrong, Mr Speaker, wrong. Because there is something else out there holding up the GDE. It is called an injunction.

Mr Wood: No, that's now solved.

MRS DUNNE: It is called an injunction, Mr Wood, and that injunction has not been lifted and there is no prospect of that injunction being lifted this week. There is no guarantee that when the lawyers for the territory turn up to Justice Crispin and say, "We've done what you wanted," Justice Crispin will be satisfied. There is no guarantee.

So all the huffing and blowing and all this sort of thing that we are holding up the GDE is nothing more than hot air, more hot air, from Mr Stanhope and Mr Corbell because, Mr Speaker, as I have said till I am just sick to death of it, they messed it up; they got it wrong; they did not do their homework; they did not think about what might go wrong. As in everything, they never think about what might go wrong; they just think, "We're from the government; we're blessed; we're the Labor Party; we should get our way; the fires will stop; the road will be built because we say so."

Justice Crispin rained on their parade. Justice Crispin has not yet lifted his injunction, and there is no guarantee yet. I have done, and this opposition did, what we could to

assist. But there is no guarantee. We cannot make up Justice Crispin's mind for him.

Mr Quinlan: Give us a hand. Give us a hand up here.

MRS DUNNE: Settle, petal. We cannot make up Justice Crispin's mind for him. We have done the best we can, but it may not be good enough. This government needs to have a good, hard look at itself in the mirror and admit that the delays that we have seen, the protests that we have seen, the people tying themselves to bulldozers and things, are because they, the government, got it wrong, not because we got in their way. They messed it up.

Mr Smyth: Who messed it up?

MRS DUNNE: They messed it up. Who has a solution? We do.

Mr Quinlan: That's what it's about. We do, yes.

MRS DUNNE: Well, you don't have an idea.

Mr Quinlan: Thank you. All night to say that.

MRS DUNNE: I have been asking all week to see it.

Question put:

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

The Assembly voted—

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

Question so resolved in the negative.

Amendment negatived.

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

Bill, as amended, agreed to.

Reunification of Cyprus
Statement by member

MRS CROSS (11.26): I seek leave to make a statement.

Leave granted.

MRS CROSS: I had a motion on the notice paper, as most members know, on the Cyprus referendum that took place a couple of weeks ago, but, due to the long day we have had and a conversation that I have had with the president of the Cypriot community in Canberra, I decided to make a statement instead to save time so that members could go home earlier tonight.

A couple of days ago a journalist asked me why I was raising the matter of Cyprus in the Assembly and what relevance did it have to the ACT. I guess that was a fair question. I like to limit the issues that I bring into this place to ACT-related issues. The answer, however, is that I am doing it on behalf of the many Greek Cypriots in the ACT constituency, on behalf of all the Greek Cypriots who have made their homes in Australia, and specifically Canberra, and who have contributed strongly to Australia through their energy, enterprise and strong family community values. And I am doing it as an affirmation of democracy, as a reminder that placing expediency ahead of democracy is not really a helpful way of solving disputes.

Let me explain. Members no doubt know that, on 24 April, the Greek and Turkish communities of Cyprus voted in the referendum on the recently presented United Nations plan for the reunification of the island. Two-thirds of the Turkish Cypriot community voted for the plan, while three-quarters of the Greek Cypriot community voted against it. This came as a great surprise to many, given that in recent years most of the efforts towards reconciliation and reunification have come from the Greek Cypriot side.

In his comments on the result of the referendum, the President of Cyprus said:

> The will of the sovereign people should not be misinterpreted by anybody. The people did not say 'no' to a solution. They said 'no' to a specific plan. We want the reunification of Cyprus and the two communities in conditions of security, with human rights and fundamental freedoms safeguarded.

Mr Speaker, I am sorry. There is too much disruption in the gallery.

MR SPEAKER: Order! There is too much discussion in the gallery.

MRS CROSS: Thank you. But despite acknowledgment in a statement by the European Commission that this was "the democratic decision of the Greek Cypriot community", the result immediately triggered a spate of copycat criticisms of the Greek Cypriot population for not approving the plan and so failing to satisfy the expectations of a number of commentators within the European Union, the United Nations, the United States, the United Kingdom, Turkey and, of course, somewhat surprisingly, the Australian government. A cynical person could be forgiven for thinking that this shared response was orchestrated.

What is most disappointing, however, is that the response reflected what the complainers themselves wanted. They wanted the problem solved and done with; they wanted a concurrence between the long-anticipated entry of Cyprus into the European Union and the reunification of the island; they wanted another positive event to add to the celebration of the enlargement of the European Union.

To see their wishes realised, they assumed that the Greek Cypriot community, which had done most of the work in recent times to improve relations between the divided communities, would automatically approve the plan—a plan that had in fact undergone last-minute and considerable modification by United Nations Secretary General Annan just prior to the referendum in his desperate attempts to appease and persuade Turkey and the Turkish Cypriot community to support the plan.

Nowhere did the critics permit the facts to intrude on their vision. Nowhere did they accord priority to getting it right instead of getting it over and done with. Nowhere did they take account of the clearly adverse effects the plan would have on the Greek Cypriot community. Mr Annan's last-minute caving in to 11 demands put to him by Turkey helped scotch the referendum.

On top of that, according to the President of the Republic of Cyprus, some or most of those demands were outside the agreed basis for negotiations and should not have been the subject of any discussion. To top things off, Mr Annan helped alienate people by claiming that this was the last chance for the people to resolve the Cyprus problem. So the world got the result that it did, instead of the one it wanted.

Some of the serious and justifiable objections of some Greek Cypriots to the plan related to:

- Acceptance by the UN of a continuing Turkish military force in Cyprus, reducing over the coming 14 years from somewhere around the 40,000 at present to a smaller perpetual presence. The Greek Cypriots want a non-partisan UN peacekeeping force, and on top of that the plan provided for the permanent presence of some troops even if Turkey became a member of the European Union.

Just think about that for a moment: Turkey as a member of the European Union, with a right to maintain a military force in the territory of a fellow member country of the European Union. It beggars belief. Is it not understandable why the Greek Cypriots would be suspicious of such half-baked arrangements?

- Permanent military intervention rights are assumed by Turkey.

This makes no sense. There can be no military intervention rights where a fellow European Union country is concerned. Military intervention is what Turkey carried out illegally in its 1974 invasion of Cyprus. Such an action is contrary to the Charter of the United Nations and naturally creates anxiety among Greek Cypriots.

- Turkish settlers to remain. The plan allows for thousands of Turks from mainland Turkey to remain in Cyprus but at the same time has reduced the number of Greek Cypriots permitted to return to their former homes in the north.

Incidentally, these settlers, who are not citizens of Cyprus but who constitute the majority of persons on the electoral rolls of the so-called Turkish Republic of North Cyprus, were permitted to vote.

- Uncertainty about the future. The plan anticipates trouble-free compliance from Turkey over the coming years, but in the absence of strong, unequivocal guarantees that Turkey and its military are committed to the plan and fully intend to implement it. Greek Cypriots do not feel reassured enough to take the bold step of abandoning their state in favour of an uncertain new state of affairs from which there would be no return.

- Restricted return to their own homes. The number of Greek Cypriots who would be allowed to return to their former homes in the north of the island was also reduced in the plan as re-worked by Mr Annan. Again the Greek Cypriots were offended and their trust in the outcome was eroded.

There are other reasons for Greek Cypriot reluctance to accept the plan but I will not go into them here. Suffice it to say that the plan that Mr Annan ended up with was a botched plan that appealed only to one side. It was cobbled together to meet a deadline that would satisfy Mr Annan's ego and the wishes of many other people, except the Greek Cypriots.

The Greek Cypriots want a fair and workable solution that will endure. They do not want an unbalanced, cobbled-together plan that will fall apart and in the end not produce the desired results.

The failure of this latest referendum cannot be the end of the matter. All parties interested in an equable exit from this impasse must apply themselves more rigorously to finding a solution. They must abide by the Charter of the United Nations and any decisions they make; they must show proper respect for human rights; they must not cause ethnic, cultural and religious divisions to become more prescribed, as they would have become if the Annan plan had been implemented. Instead they should seek a plan that would reduce the ethnic, cultural and religious divisions so as to foster a harmonious society to replace the tense society that has endured for some decades. Then we might see a practical and proper solution.

The president of the Cypriot community, Mrs Georgia Alexandrou, today sent me a statement from the Cyprus Community of Canberra and Districts and the Justice for Cyprus Coordinated Community of the ACT. The statement reads as follows:

> The Cypriot people have by an overwhelming majority in a referendum held on 24 April 2004 decided not to endorse the settlement of the Cyprus problem proposed by the United Nations Secretary General Mr Kofi Annan ...
>
> The rejection is not because the Greek Cypriot people do not want a rapprochement and a lasting settlement with their Turkish Cypriot compatriots.
>
> This decision is a rejection of the Annan plan because of its intrinsic deficiencies and problems which make it unworkable.

I have covered why in more detail in my speech, but it is very important that members of this Assembly and the broader community understand the great anxiety that was generated by comments made earlier by the foreign minister, Mr Downer. I am pleased to say that since Mr Downer made those statements not only has the Greek Cypriot community around Australia made strong representations to the Prime Minister's office

down but Mr Downer has softened his approach and has published press releases on his website, which I have circulated to members in the Assembly today for their information, stating that indeed he understands and respects the Greek Cypriot decision and he accepts it. Well, one would think that in an election year a foreign minister would be more prone to accepting the decisions of a larger number of Greek Cypriots given that they represent a high number of votes. But I do appreciate the fact that Mr Downer has found a more sensible approach to this.

Again, I wanted to thank Mrs Georgia Alexandrou, who has done an exceptional job in representing her community. To those who were cynical, particularly in the media, as to why I was bringing this motion forward, I state that I did have a number of constituents come to me to complain about this. This matter caused me great concern, and it was very important that the people of the ACT and in fact Australia understand that the Greek Cypriots did not vote against the reunification; they voted against this particular plan.

I thank members for allowing me to make this statement, particularly at such a late hour, and I commend the statement to the Assembly.

Adjournment

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

> That the Assembly do now adjourn.

Urban land
Mental health expenditure

MR CORBELL (Minister for Health and Minister for Planning) (11.37): I would just like to correct some information that I previously provided to the Assembly. It has been brought to my attention that on 1 April 2004 during question time, in response to a question from Ms MacDonald on the transfer of residential land to the then Goorooyarroo Nature Park, I initially advised Ms MacDonald that over 1,000 hectares of an area previously designated as residential land had been incorporated into the Canberra Nature Park.

I have subsequently been advised that the 1,000 hectares was not all residential land and that the amended figures should read 399 hectares in total set aside for residential development. This represents approximately $399 million in today's terms of revenue forgone by the territory for environment protection and equates to approximately 5,985 dwelling sites.

I would also like to advise the Assembly that in a debate in the Assembly on 11 March I brought to the attention of the Assembly that per capita expenditure on mental health in the ACT had increased to $117 per capita under the Labor government. This is correct. However, I am advised by my department that the level of expenditure at the time of the change of government was $82.50 per capita, not $67 per capita. This error was included in the speech prepared for me by ACT Health, and I wish to correct the record so there is no misunderstanding.

Canberra's assets

MR HARGREAVES (11.39): I wish to speak today about Canberra's assets. We hear a lot about Canberra's unique and special assets. The analysis is usually presented from the perspective of governments or business and in the latter case is usually self-serving and precedes a request for a hand-out or a policy concession.

I look at our assets from the point of view of the ordinary person, the kind of people who live in Tuggeranong, the kind of people who vote for the ALP and whom I am proud to represent. Some of the things that people in my constituency need and value are of course good schools and hospitals, and I know the ALP has a track record of service delivery. A second priority for community assets is a reliable land and planning system to deliver high-quality and affordable housing in a safe and well-maintained network of roads and transports. The layout of our city, based on a wide plan, also requires innovative planning for the provision of decentralised employment and retail opportunities.

The last thing we need is an imbalance between the location of residential, retail and employment facilities. Maintenance of that balance is an absolute, essential component of our governing principles. This has been an ongoing assumption in our community, but I am concerned that some of our community and business leaders may have lost sight of it. I am determined to remind them on behalf of the people of Tuggeranong how important it is to protect that essential framework.

We have seen evidence of a dangerous tendency to tinker with those principles; for example, we constantly see expressions of opinion from normally intelligent people that Canberra airport is our most significant commercial and infrastructure asset. I think we need to maintain some balance here. And we should remember that the airport was rarely spoken of as a unique asset when it was owned by the people. It has only reached that unique and special status since it was sold by the Howard government, along with a lot of commercial land, which was included in the sale essentially as a bonus.

We need to remember that the average Canberran would be amazed to hear that the airport is a prime asset. It supplies a very limited range of permanent jobs; it provides a limited gateway for tourists and visitors, the vast bulk of whom come here by road; for historical reasons, it occupies a lot of land adjacent to Canberra and Queanbeyan on which it definitely would not be sited if it were being established today.

We need to maintain an understanding of what our constituents regard as real assets. These are: our basic infrastructure, planned around a decentralised city, which is the essential framework for employment and retail services. When we speak of assets we generally refer to community-owned assets. The airport is privately owned, as is the town centre surrounding it.

Well, let's focus on what we have created in Tuggeranong. We have a vibrant community, with sophisticated entertainment and cultural services in a unique physical setting. We have a range of schools, colleges and retail facilities that provide a unique range of services for a community of our size. Where else in Australia would a community like Tuggeranong be allowed to establish and retain a facility as unique as

the Nolan Gallery? May I say that I will lead a very effective revolt against any suggestion that the Nolan collection should be relocated to reside in any other Canberra asset.

Our experience with the Liberals in government in the ACT and nationally suggests that their view of community assets is all about dollars. To Liberals in government, an asset is what you can outsource or sell to your mates.

All I want to say today is that our most important assets are established by significant principles of history and urban planning. As a proud member for Tuggeranong, I would like to remind this Assembly and the business community that we need to be sensible about preserving what we have created.

Autism awareness week

MRS BURKE (11.41): Last September I held a focus group, if you like, with some parents of children with autism. In fact we should note that this week many of us—and probably all of us—received a pin-a-politician letter from Mr Shane Garoni, the secretary of the Autism Association ACT. I am wearing that little lapel badge today.

I was very pleased to note in the budget that the government has indeed put some funding towards autism. I note in here that Mr Wood is on a trip soon to the UK and will be looking into autism services there. I think that is to be commended.

Mr Garoni wrote:

> Autism awareness week in 2004 is a chance to reflect on issues affecting people on the autism spectrum and their associates such as:
>
> - Autism/ASD is, by definition, a clinical condition—as such, autism/ASD requires clinical attention that is not accessible to most children with autism in the ACT.
>
> - Autism in children has increased alarmingly—research shows the autism/ASD diagnosis rate in the ACT reached at least 1% of the birth rate in 1997—

and with the exponential increase I am sure that by now that is indeed further ahead than 1 per cent—

> - Autism is a distinct disability that needs specific attention.
>
> The ACT Autism Association appreciates the government's important steps in its 2004-05 budget towards improving services for children with autism spectrum disorders. We particularly commend allocations of funds specifically to benefit young children and students with autism in the areas of Therapy ACT and Education.

So, it is a good-news story, and I am happy and pleased to be able to stand here saying that, if I had some small part in that, then that is good. It is teamwork. I applaud the government for noticing that, where there are needs in community—and these people

feel that they have not been heard for a couple of years now—this year that has actually been addressed in some way. So I look forward to seeing the good outwork of that funding in this budget.

Retirement of Ms Linda Atkinson

MRS DUNNE (11.43): I want to place on the record that today was the last day of service to the Assembly by Linda Atkinson who, for the past year or so, while I was the chairman of the Planning and Environment Committee, was the secretary to the Planning and Environment Committee. Linda is retiring because you get to that age where, not because you need to retire, your investment in the CSS says that you must or you are going to lose a motser.

I make two points. It is time that legislators, both here and in other places, addressed the issue of retirement income because we have seen many people retire, by their own lights, prematurely because if they do not they are financially disadvantaged for many years to come. We hear many people in the federal parliament and elsewhere saying we should be encouraging people to stay at work for longer, but at the same time there is a disincentive for them to do so—a substantial disincentive. I know that it is all buried deep in the setting up of the legislation underpinning the CSS and the PSS, but I think it is time that legislators in the big house up on the hill did something about it. That is a thought for another day and perhaps another Assembly.

In standing, I would also like to wish Linda well. She was a ray of sunshine around the place. She made committee work a pleasure. She was known as the Imelda Marcos of the Assembly, in a nice way, because Linda has a truly enviable shoe collection—one that I envy considerably. I would just like to take this opportunity to thank her for her service to the Assembly and her service to the Planning and Environment Committee, and wish her well not in her retirement, because she is far too young to retire, but in whatever she chooses to do from here.

Question resolved in the affirmative.

The Assembly adjourned at 11.45 pm.

Schedules of amendments

Schedule 1

Environment Legislation Amendment Bill 2004

Amendments moved by Ms Dundas

1
Clause 7
Proposed new section 60F (5)
Page 7, line 17—

insert

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

2
Clause 7
Proposed new section 60G (5)
Page 8, line 17—

insert

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

3
Clause 7
Proposed new section 60H (3)
Page 8, line 22—

insert

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

4
Clause 7
Proposed new section 60O (5)
Page 13, line 24—

insert

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

5
Clause 7
Proposed new section 60P (5)
Page 14, line 22—

insert

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

6
Clause 7
Proposed new section 60Q (4)
Page 15, line 6—

insert

(4) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

Schedule 2

Environment Legislation Amendment Bill 2004

Amendments moved by Ms Tucker

1
Clause 7
Proposed new section 60I (b)
Page 9, line 5—

omit the proposed subclause

2
Clause 7
Proposed new section 60I (c)
Page 9, line 8—

omit the proposed subclause

3
Clause 7
Proposed new section 60I (d)
Page 9, line 10—

omit the proposed subclause

4
Clause 7
Proposed new section 60R (b)
Page 15, line 11—

omit the proposed subclause

5
Clause 7
Proposed new section 60R (c)
Page 15, line 14—

omit the proposed subclause

6
Clause 7
Proposed new section 60R (d)
Page 15, line 16—

omit the proposed subclause

Schedule 3

Environment Legislation Amendment Bill 2004

Amendments moved by the Minister for Environment

1
Clause 7
Proposed new section 60K (2)
Page 10, line 11—

omit proposed new section 60K (2), substitute

(2) The court may, in addition to or instead of any other penalty it may impose for the offence, order the person to do any of the following:

(a) take any action the court considers appropriate, including action—

(i) to mitigate the effect of the clearing; and

(ii) to restore native vegetation in the area cleared;

(b) pay an amount to the Territory for reasonable costs incurred, or to be incurred, by the Territory in taking action—

(i) to mitigate the effect of the clearing; or

(ii) to restore native vegetation in the area cleared; or

(iii) to monitor the outcome of action ordered under paragraph (a) or action mentioned in subparagraph (i) or (ii).

2
Clause 7
Proposed new section 60T (2)
Page 17, line 3—

omit proposed new section 60T (2), substitute

(2) The court may, in addition to or instead of any other penalty it may impose for the offence, order the person to do any of the following:

(a) take any action the court considers appropriate, including action—

(i) to mitigate the effect of the damage; and

(ii) to rehabilitate the land damaged as closely as possible to its condition before the damage;

(b) pay an amount to the Territory for reasonable costs incurred, or to be incurred, by the Territory in taking action—

(i) to mitigate the effect of the damage; or

(ii) to rehabilitate the land damaged as closely as possible to its condition before the damage; or

(iii) to monitor the outcome of action ordered under paragraph (a) or action mentioned in subparagraph (i) or (ii).

Schedule 4

Environment Legislation Amendment Bill 2004

Amendments moved by the Minister for Environment

1
Proposed new clauses 8A, 8B and 8C
Page 20, line 16—

insert

8A Section 74

omit

Application

substitute

(1) Application

8B New section 74 (2) to (6)

insert

(2) However, subsection (1) does not apply to a decision if the Minister declares the decision not to be subject to review by the administrative appeals tribunal under subsection (3).

(3) The Minister may, in writing, declare that a particular decision mentioned in subsection (1) (d), (f), (g) or (h) is not subject to review by the administrative appeals tribunal.

(4) The declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) If the conservator makes a decision and the Minister makes a declaration under subsection (3) in relation to the decision, the conservator must give written notice of the decision to the person whose interests are affected by the decision.

(6) A notice under subsection (5) must include a statement explaining that a declaration under subsection (3) has been made in relation to the decision and the effect of the declaration.

8C **New section 74A (3)**

insert

(3) This section does not apply to a decision if the Minister makes a declaration under section 74 (3) in relation to the decision.

Schedule 5

Environment Legislation Amendment Bill 2004

Amendments moved by the Minister for Environment

1
Proposed new clauses 8A, 8B and 8C
Page 20, line 16—

insert

8A **Section 74**

omit

Application

substitute

(1) Application

8B **New section 74 (2) to (8)**

insert

(2) However, subsection (1) does not apply to a decision declared under subsection (3) to be about conduct related to works for the Gunghalin Drive extension.

(3) The Minister may, in writing, declare that a stated decision of the conservator mentioned in subsection (1) (d), (f), (g) or (h) is about conduct related to works for the Gunghalin Drive extension.

(4) The declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(5) If the Minister makes a declaration under subsection (3) about a decision of the conservator, the conservator must give written notice of the decision to the licensee.

(6) The notice under subsection (5) must include—

(a) a statement that a declaration under subsection (3) has been made in relation to the decision; and

(b) a statement about the operation of subsection (2).

(7) In this section:

Gunghalin Drive extension—see the *Land (Planning and Environment) Regulations 1992*, regulation 42 (4) (Exclusion of appeals—general).

works, for the Gunghalin Drive extension, includes—

(a) works that are part of the construction of the Gunghalin Drive extension; and

(b) works related to the construction of the Gunghalin Drive extension.

(8) Subsections (2) to (7) and this subsection expire when the *Land (Planning and Environment) Regulations 1992*, regulation 42 (3) expires.

8C New section 74A (3)

insert

(3) This section does not apply to a decision to which a declaration under section 74 (3) applies.

(4) Subsection (3) and this subsection expire when the *Land (Planning and Environment) Regulations 1992*, regulation 42 (3) expires.